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HISTORY OF LEGISLATION REGULATING THE MERCANTILE
BUSINESS IN THE STATE OF ILLINOIS SINCE 1860

BY

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May 2 1918

I HEREBY RECOMMEND THAT THE THESIS PREPARED UNDER MY
SUPERVISION BY William Henry Dreesen

ENTITLED History of Legislation regulating the Mercantile
Business in the State of Illinois since 1860

BE ACCEPTED AS FULFILLING THIS PART OF THE REQUIREMENTS FOR
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CHAPTER I

Warehousing

I. Warehousing Prior to The Legislation of 1871. Warehousing is the business of storing the surplus products of industry for future demand. It is an important step in the marketing process of many products. The business directly creates time utilities and indirectly assists in the creation of place utilities. The accumulation of surplus products is a practice as old as civilization and it has frequently been subject to state regulation.¹ Its large scale operation has however always depended upon improved means of transportation and marketing conditions. Improved means of transportation, concentration of population in large centers, geographical distribution of labor, and warehousing go hand in hand.

The history of governmental regulation of warehousing in the State of Illinois is almost coincident with the history of public grain warehousing in the city of Chicago. This city, because of its location on the Great Lakes, in the midst of the greatest grain region of the country, early became one of the primary grain markets in the United States.²

The Constitution of 1848 contained no provisions directly relating to the business of public grain warehousing and the statutory provisions, prior to the passage of the acts of 1871,

1. Monthly Summary of Commerce and Finance, Oct. 1913, pp. 1035ff. Ashley's English Economic History, II. pp. 37ff. Herman's Untersuchungen p. 25.

2. "Elevators were built in Chicago in the 50's; possibly as early as 1848 there was an elevator in Chicago. - - One of the most important features of the handling of grain in Chicago is its storage; and it being at the end of the railway lines and the beginning of water navigation, it has become necessary to establish large and numerous elevators here." United States Industrial Commission Report, Vol. 10, p. 295.

failed to provide regulation at many points which are at present considered in greatest need of State supervision.

The statutes, prior to 1867, provided that public warehouses might be kept at the places designated by county commissioners. These officials were also to appoint inspectors of beef, tobacco, hemp, and flour. Standard weights and measures were to be kept and used there. The warehousing and inspection of tobacco was more carefully provided for.¹ An attempt was also made to guard against the fraudulent issue of warehouse receipts. It was made a criminal offense for any warehouseman, wharfinger or other person to issue any receipt or other voucher for any goods, wares, merchandise, or grain to any person claiming to be the owner thereof, unless such goods or wares had been bona fide received into store. Neither was any person to issue receipts on property not his own.²

These laws were highly inadequate and as no provision was made for their enforcement they were generally disregarded.³

In 1860, over thirty millions bushels of grain were received in the city of Chicago and over twenty-seven millions of bushels were shipped out.⁴ The storage capacity of the city elevators was at this time somewhat over five millions and four-hundred thousand bushels.⁵ But the system of grain inspection was very defective. There was no uniformity of inspection and no responsibility was attached to the inspectors. Every inspector was his own judge of the qualities and grades of grain inspected.⁶

1. The provisions of this law cover over six pages in the statutes of 1860. Statutes of Illinois 1860, pp.279ff.

2. Ibid.p420.

3. Illinois Railroad and Warehouse Commissioners' Report,1872,p.15

4.Chicago Board of Trade Reports,1867, p.7.

5.Ibid. p. 9.

6. Ibid. 1858, p. 10.

In 1858, the Chicago Board of Trade, on the recommendation of its committee on grain inspection, appointed one chief grain inspector with the power to appoint deputies. Regular inspection fees were agreed upon and free access to warehouses was provided for the inspectors. Only such grain as the receipts called for was to be delivered from store.¹ The proprietors of grain elevators agreed to assist in the enforcement of these regulations.²

By a special act of the legislature, the following year, incorporating the Chicago Board of Trade, that board was granted power to appoint, (as had been done by the board in the previous year) one or more persons, as they might see fit, to examine, weigh or inspect flour, grain or any other article of produce.³ The certificate of such inspector was made binding upon the members of the corporation and all others assenting to the employment of such inspectors or weighers. But the law compelled no one outside of board of trade members to employ such an appointee.⁴ Thus there was no compulsory in-inspection or out-inspection of grain stored

1. Chicago Board of Trade Reports, 1858, pp. 12ff.

2. "Up to the fifteenth of May, 1860, no rule had gone into effect requiring grain received by canal to be inspected. Such a rule now exists and is giving pretty general satisfaction. New grades for grains have been adopted by the board." Ibid. 1859, p. 13.

3. "Boards of Trade and Chambers of Commerce.

"Section I. That any number of persons not less than twenty, residing in town or city, may associate themselves together as a board of trade, and assembly -----and elect officers, --adopt a name, constitution and by-laws, ----and shall thereupon become a body corporate, ---" Illinois Session Laws, Feb. 8, 1861, p. 42; Statutes of Illinois, 1860, pp. 275ff.

4. Act Incorporating the Chicago Board of Trade, Section, 10.

in public warehouses, no regulation on the mixing of grain, or on the registration or cancellation of warehouse receipts.

To remedy the above mentioned defects, which had given rise to gross abuses,^I a fairly comprehensive act was passed in 1867 for the purpose of regulating warehousemen and also for the purpose of authorizing connections with railroads. It was provided that all persons who kept a warehouse in the State of Illinois, for the storing of grain, in which warehouse the grain of each person was kept in a separate bin, distinct from the grain of all other persons, should be classed "private warehousemen" and all persons who kept a warehouse for the storing of grain in bulk, and in which the grain of different owners was, in any way mixed, should be classed "public warehousemen". Both public and private warehousemen, who received grain into store, should, on the demand of the owner, issue receipts setting forth the quantity, kind, and grade of grain received into store. Private warehousemen were not to mix grain of different owners and upon the surrender of the warehouse receipt they were to surrender the identical grain received.

All public warehousemen, in all places where the storage capacity of the city exceeded one million bushels, were to publish at the beginning of the year the storage rates for that year. No discrimination in rates was allowed.

In all places, where lawfully authorized inspectors of grain were appointed, it was made their duty, on the application of any public warehouseman to inspect and determine the grade of any grain about to be delivered into or out of any public warehouse. In all places where such inspectors had been appointed no grain should be received into store until so inspected and graded.

I. Chicago Tribune, March 2, 1870, p. 2, c. 2.

All persons keeping public warehouses in Chicago were to file with the board of trade of the city, each week, a statement showing the amount of each kind of grain in store.

All receipts for grain issued by any warehouse were declared negotiable, by indorsement, in the same manner and to the same extent as bills of exchange and promissory notes.

No printed or written conditions inserted in any warehouse receipt which in any manner limited the liability imposed by law should have any force or effect.

All persons interested in any grain stored in any warehouse should, at all times, have the right to visit such warehouse. He might also have the scales inspected and tested.

Discrimination in rates between grain received over different roads entering any city was made unlawful.

All contracts for the sale of grain for future delivery, except in cases where the seller was the owner of such grain at the time of making the contract and in actual possession thereof were declared void and gambling contracts.

It was also made unlawful for any railroad to deliver grain to any warehouse, other than that to which it was consigned.^I

The above act had little effect upon the warehousing business in the city of Chicago. Compulsory weighing and registration of warehouse receipts were not provided for. The railroad companies were not compelled to deliver grain by weight to the elevators and no provision was made for compulsory out-inspection. But the most serious defect in the law was that it made no provision for state officials charged with the enforcement of the law. This left the warehousing business almost as completely as here-

I. Public Session Laws of Illinois, 1867, pp.177ff.

tofore in the control of the Chicago Board of Trade which organization had no authority to enforce the State law.

The sections of the act, making illegal dealings in futures, other than in cases where the seller was the owner and in actual possession of the grain, were repealed by the next legislature.¹

The grain trade of the city of Chicago grew rapidly and the storage capacity of Chicago elevators had increased to 11,580,000 bushels by 1870.² The aggregate receipts in 1871 were 83,000,000 bushels of grain and the shipments aggregated 71,000,000.

The importance of the warehousing business and the apparent necessity for legislation on the subject is evidenced by the newspaper editorials of the day, the Chicago Board of Trade Reports, the debates in the constitutional convention of 1870, and particularly by the fact that an article consisting of seven sections on warehousing became a part of the organic law of the State. Making allowances for probably exaggerations in complaints made by editors, Board of Trade members, and the delegates on the convention floor there is no doubt that the grain producers of the

1. Public Session Laws of Illinois, 1869, p. 410.

2. Chicago Board of Trade Reports, 1870, p. 44.

Year	Aggregate Annual Receipts of all grains in Chicago in millions of bushels:	Aggregate Annual ship- ments of all grains from Chicago; millions bushels:
1860	37,	31,
1861	53,	50,
1862	57,	56,
1863	57,	54,
1864	49,	46,
1865	54,	52,
1866	68,	65,
1867	60,	55,
1868	69,	63,
1869	63,	56,
1870	60,	54,
1871	83,	71,

Ibid. for the Year 1871, pp. 36, 37.

State of Illinois and of the entire Northwest had many causes for complaint.

The complaints most common were over-issue of warehouse receipts, short-weight by railroads in their delivery, monopolistic control of the grain trade by a few elevatormen and railroad companies, fraudulent inspection, gambling by members of the Board of Trade of Chicago, and the use of false weights by warehousemen.

The practice most derogatory to the grain business of Chicago, to the country grain dealer, and to the grower of the Northwest was the formation of rings and combinations on the part of railroads and warehousemen. The result of such practice was that no one could send his grain to an elevator not owned by the warehousemen's union without paying a royalty to the railroads in the form of higher freights rates.¹

Bitter complaints were made by growers and shippers of grain in the Northwest and by members of the Chicago Board of Trade but they were unable to cope with the situation, without the assistance of the law.

1. "There are two classes of persons who stand as toll-gatherers between the producers and consumers of the breadstuffs and other articles essential to the life and comfort of the whole people,---viz., the transportation companies and the warehousemen,---who take as toll about one-half of every bushel of grain sold on the seaboard. To adjust upon some equitable basis the compensation of these intermediary agents for moving the crops, is one of the most important as it is, seemingly, the most difficult, problem of the day.-----Certain railroads have resolved that they will not take up a bushel of grain at any point where there is an elevator unless the grain passes through that elevator and pays its tolls; in other cases the railroads refuse to take grain from one point to another unless warehouse tolls are paid to the elevators in the towns through which the trains may pass; nor will these railroads deliver grain to any consignee unless it first passes through some warehouse of the combination."

The Chicago Tribune, March 2, 1870, p.2c.2.

The commercial interest of Chicago were alarmed over the situation. It was feared that grain from the West would find its way to the Eastern seaboard by other routes than the Chicago routes. Grain from Minnesota could go by way of Milwaukee and the grain from the States to the South of Minnesota could be shipped down the Mississippi.¹

Fraudulent issue of warehouse receipts by the warehousemen and the failure to cancel the receipts when grain had been delivered on them was another practice derogatory to the commercial interests of Chicago and the grain interests of the Northwest.² The Chicago Board of Trade, although unable to entirely prevent the fraud in warehouse receipts, was responsible for improvement in the matter. The board required the registration of all receipts for grain which were bought or sold on the floor of the exchange. This however did not prevent the issue of receipts without registration. It only prevented such receipts from being legal tender on the Exchange.³

1. The Chicago Tribune, Feb. 16, 1870, p.2, c.2; Ibid. July 4, 1871, p.3, c.3; Ibid. Aug. 18, p.2, c.1;

"The farmers of the Northwest have been somewhat slow in reaching the conclusion that they have been paying tribute to Chicago and the railroads rings of the East. They are waking up now to a consciousness of the fact that the grain they ship to the New York market is taxed for the support of a chain of dealers, handlers, and forwarders, until the pittance returned to them from sales is not equal to a fair remuneration for their actual labor."

Cairo Evening Post, 1869, April 1, p.1, c.1.

2. "One reason why the warehousemen refused to register the amount and number of their grain receipts outstanding was due to the fact that they were in collusion with the railroads to the effect that the railroads should deliver all grain shipped to Chicago to the ring elevators. The elevator claimed that in order to receive all the grain shipped to them they often had to sell a portion on their own account which they could not do if all receipts were registered." Chicago Tribune, Feb. 16, 1870, p.2, c.3.

3. "The banks have now stepped in and made a proposition, with which no respectable warehouseman can refuse to comply. They propose that the warehouse registrar who stamps the receipts shall also cancel the receipts when the grain is withdrawn, and prevent its further circulation.-----This proposition has been accepted by the warehousemen." Ibid. Aug. 23, 1872, p.4, c.2.

Excessive rates for storing grain were also detrimental to the Chicago grain interests. A yearly rate equal to one-third of the selling price of wheat was not uncommon.¹

On the convention floor of 1870, many petitions were presented demanding that provisions for the regulation of railroads and warehouses be placed in the organic law of the State. It was urged that railroads and warehouses had become great monopolies to the detriment of the producer and the shipper of grain.² The regulation of these interests, it was urged, might be left to the legislature, but this body might be controlled in the future by railroad and warehouse men as some previous legislatures had been.

Numerous instances of extortion were cited. A short weight of fifty bushels to the carload was not considered as extraordinary.³ Cases of fraudulent inspection making a difference of as much as fifteen cents per bushel were given as authentic.

A Mr. Medall proposed in the convention of 1870, that five things were wanted in regard to the grain question as follows:

"The first is, that the grain of the farmers and shippers

1. "The cost of storing wheat for one year is thirty-three and one-third percent of its selling price today; and for oats nearly seventy-four percent. It is no wonder that the farmers of the section near the Mississippi have been casting about, for years past, to find some other way by which their grain can reach its market in the Eastern States---."Chicago Tribune, 1870, March, 17, p.2.

2. On the convention floor, a Mr. Eldridge presented a petition signed by one hundred and five merchants and business men of Seneca, La Salle county, asking "--that a provision be made in the organic law of the State for the protection of the public against frauds and combination, and over issue of receipts by warehousemen, or private corporations who receive goods,---; and also for the protection of shippers of produce, against the wrongs perpetrated upon them by transportation companies, and by short weights in their delivery." Debates in the Constitutional Convention of 1870, p.679.

Another member stated on the convention floor: "Elevators and warehouses have got to be great monopolies. The elevator men control the whole grain trade of the Northwest--." Ibid. p. 1622. Heated discussions covering over twenty pages in the Debates took place on the convention floor.

3. Ibid. 1622.

shall be delivered where consigned, and to the elevator to which it is sent.

"The second is, that the weight or quantity of grain delivered shall be equal to that received by the railroad companies from the owners.

"The third thing is, that the quantity of the grain in store shall be known to the owners of the grain and to the public.

"The fourth proposition is, that a reasonable degree of honesty must be secured in grading the grain into and out of the warehouse.

"The fifth proposition is, that railroads shall be compelled to permit connections with their tracks to competing warehouses in the vicinity of the tracks."¹

The above proposals covered the most important points relative to warehouse regulation and were embodied, among others, either in the article in the constitution on warehousing or in the law of 1871 or in both.

The report from the "committee on the whole" to the constituent assembly contained the article practically as finally adopted in the convention.² The only changes of importance were made in sections three and six.

Section three as reported by the committee read: "The board of trade of any city or town where a public warehouse is located, may appoint committees whenever it may desire, who shall have full power to inspect the books of any warehouse whenever said board shall deem it necessary---." ³ After considerable debate this paragraph was stricken out. Although boards of trade, as such, were considered honorable men, it was urged that some of the members were gamblers and hence "leeches upon the commerce of

1. Debates in Constitutional Convention, p. 1629. 2. Ibid. p. 1693. 3. pl. 622

the community." ¹

Section six as reported read: "The board of trade or other commercial organization of any town or city, to be designated by law, shall have the power to make such rules in regard to the inspection of grain as may be just and proper, for the protection of producers, shippers, and receivers of grain."²

This clause was rejected for the same reason that section three was rejected. Section two as reported by the committee did not contain the clause "situated in any town or village of not less than 100,000 inhabitants." This clause was inserted in the section before its final adoption.³

Certain members were opposed to placing any articles in the constitution regulating warehouses on the grounds that it was deemed special legislation. It was urged that these matters should be left to the legislature which could then change the laws from time to time as the people might desire. ⁴ It was also argued that this regulation unnecessarily interfered with business.⁵ The members, however, who advocated non-interference and the granting of regulatory power to the boards of trade were in the minority and the following article became a part of the organic law of the State:

"ARTICLE XIII, WAREHOUSES

"Section 1. All elevators or storehouses where grain or other property is stored for a compensation, whether the property stored be kept separate or not, are declared to be public warehouses.

"Section 2. The owner, lessee or manager of each and every public warehouse situated in any town or city of not less than 100,000 inhabitants shall make weekly statements, under oath, before some officer to be designated by law, and keep the same posted in some

1. Debates in the Constitutional Convention, p. 1623. 2. Ibid. p. 1622.
3. Ibid. p. 1697; 4. Ibid. p. 1628; 5. Ibid. p. 1700.

conspicuous place in the office of such warehouse, and shall also file a copy for public examination in such place as shall be designated by law, which statement shall correctly set forth the amount and grade of each and every kind of grain in such warehouse, together with such other property as may be stored therein, and what warehouse receipts have been issued and are at the time of making such statement, outstanding therefor, and shall, on the copy posted in the warehouse, note daily such changes as may be made in the quantity and grade of grain in such warehouse; and the different grades of grain shipped in separate lots shall not be mixed with inferior or superior grades, without the consent of the owner or consignee thereof.

"Section 3. The owner of property stored in any warehouse or holder of a receipt for the same shall always be at liberty to examine such property stored and all the books and records of the warehouse in regard to such property.

"Section 4. All railroad companies and other common carriers on railroads shall weigh or measure grain at points where it is shipped, and receipt for the full amount, and shall be responsible for the delivery of such amount to the owner or consignee thereof, at the place of destination.

"Section 5. All railroad companies receiving and transporting grain in bulk or otherwise shall deliver the same to any consignee thereof,, or to any elevator or public warehouse to which it may be consigned, provided such consignee or the elevator or the public warehouse can be reached by any track owned, leased or used, or which can be used by such railroad companies; and all railroad companies shall permit connections to be made with their tracks so that any such consignee and any public warehouse, coal bank or coal

coal yard, may be reached by the cars on said railroad.

"Section 6. It shall be the duty of the General Assembly to pass all necessary laws to prevent the issue of false and fraudulent receipts, and to give full effect to this article of the constitution, which shall be liberally construed so as to protect producers and shippers. And the enumeration of the remedies herein named shall not be construed to deny to the General Assembly the power to prescribe by law such other and further remedies as may be found expedient, or to deprive any person of existing common law remedies.

"Section 7. The General Assembly shall pass laws for the inspection of grain, for the protection of producers, shippers, and receivers of grain and produce."

The above article of seven sections as adopted by the constituent assembly of 1870, and as ratified by the people, is the present constitutional provision on public warehousing.

2. Warehouse Legislation of 1871. The first legislature, meeting under the new constitution, passed three acts regulating warehousing and the carrying and delivery of grain by railroads.

The first act provides for the appointment, by the governor of the State, of a commission of three persons, called the "Railroad and Warehouse Commissioners." The persons so appointed were not to be interested financially in any railroad or warehouse nor were they to be in the employ of any railroad or warehouseman in the State. This commission was charged with the execution of the laws regulating the railroads and warehouse business. All records of such business were also to be open to their inspection.¹

Grades for grain were established by this act; but the next legislature repealed this part of the act and authorized the commissioners to establish and change the grades for grain as conditions demanded.²

Under the subject of railroads, an act was passed for the purpose of regulating the receiving, transportation, and delivery of grain by the same. Every railroad company is bound under the act to receive and carry all grain offered to it in bulk without discrimination or favor between shippers. At the time such grain is received it must be weighed, a bill of lading, stating the correct weight must be given and the grain delivered to the warehouse to which it is consigned.

At all places from which fifty-thousand bushels of grain

1. Laws of Illinois, 1871, pp. 618ff.

2. Ibid. 1873, p. 189.

2. It is difficult to explain why the legislature did not leave the fixing of grades for grain in the hands of the Railroad and Warehouse Commissioners from the first. It would seem to show the legislature's ignorance relative to the grain business. They must have been ignorant of the fact that grades cannot be established for all time but that they must be flexible in order to be workable. It would further indicate extreme distrust toward the Chicago Board.

were carried by the road during the previous year, the railroad corporation was to erect and use correct scales. Every railroad must also permit connections to be made with its tracks and public warehouses and must receive from other carriers, at their crossings and junctions any grain shipped.¹

The third act deals directly with the warehouse business and was passed to give effect to the articles on warehousing as found in the constitution of the State.

According to this act public warehouses are divided into three classes designated as A, B, and C. Class A embraces all elevators located in cities of 100,000 population or more, in which elevators grain is stored in bulk and in which grain of different owners is mixed. Public elevators of class B embrace all other warehouses in which grain is stored in bulk and mixed. Class C include all other warehouses where property of any kind is stored for a compensation.

Proprietors of public elevators of class A are required to procure from the circuit court of the county licenses permitting them to transact business as public warehousemen.

Every public warehouseman must receive for storage any grain tendered him provided he has room for the same. All grain so received must be duly inspected and graded and upon delivery must be out-inspected. No grain of different grades may be mixed.

Upon the application of the owner of grain stored, the warehouseman of class A, must issue a receipt stating the quantity and inspected grade of the grain. Upon the return of the receipt the grain must be delivered and the receipt canceled.

Clauses limiting or modifying the warehouseman's liability may not be inserted in the receipt. False receipts may not be

1. Laws of 111., 1871, pp. 636, ff.

issued and no grain may be delivered except upon the return of a genuine receipt.

Public warehousemen of class A, must issue weekly statements giving the amount and kinds of grain in store. A daily statement of the amount of grain received on the previous day must be presented to the registrar.

The appointment by the governor of a chief inspector of grain in every city in which there is located a public elevator of class A, is provided for. Such inspector may not be a member of the board of trade nor interested in any warehouse in the State. Assistant inspectors may be appointed by the railroad and warehouse commissioners. A registrar of warehouse receipts is also to be appointed by the commission.

A table or schedule of rates for the storage of grain during the ensuing year must be published during the first week in January of each year by all warehousemen of class A. These rates may not exceed the rates fixed by statute.¹

All persons having property in store in public warehouses may examine the same at all reasonable hours and any duly authorized inspector and sealer of weights may test the scales of the warehouse.

In all places where there are duly appointed inspectors

 1. "The maximum charge for storage and handling of grain, --- shall be, for the first thirty days, or part thereof, two cents per bushel, and for each fifteen days, or part thereof, after the first thirty, one-half of one cent per bushel:--- grain damp or liable to early damage, ----may be subject to two cents per bushel storage for the first ten days, and for each additional five days, -----not exceeding one-half of one cent per bushel."

Laws of Illinois, 1871, pp.762ff.

of grain no proprietor of a public warehouse of class B is permitted to receive any grain and mix the same with the grain of others until the same shall have been duly inspected and graded.

No railroad company may enter into any agreement with any public warehouseman to deliver the property of any person to any warehouse other than the one to which it is consigned.¹

The above laws have undergone comparatively few important changes and remain up to the present time the fundamental laws on public warehousing in this State.²

The most important feature in which the act of 1871, differs from the previous acts is in the provision made for the appointment of officials who are charged with the enforcement of the laws. The Railroad and Warehouse Commission were given general supervisory powers, the chief inspector has charge of the inspection of all grain going into and out of public storage, and the chief registrar has charge of the department of registration which places its official stamp on all receipts representing grain in store.³

The most serious defects in the law are its failure to provide for the regulation of public warehouses of class B and C and for State supervision of weighing.⁴ Other defects in the grain

1. Laws of Illinois, 1871, pp. 762ff.

2. If the last section was passed to prevent "rings" and "corners" it failed to accomplish its purpose. A law forbidding railroads and warehousemen to enter into any agreement whatsoever among themselves relative to the delivery and storage of grain might have been more effective. The act of 1871, also provides that the department of registration register for "cancellation" all receipts before they are presented for the delivery of grain. This law soon became a dead letter but was reenacted in the year 1901.

Ibid. 1901, p. 320; also vide Ibid. 1907, p. 489.

3. For the changes made in the supervision of public warehouses by the Public Utilities Act, see *infra* p. 48.

4. Railroad and Warehouse Commissioners Reports 1871-70, p.17.

storage business were not due to ommissions in the law but to the failure on the part of the railroads and warehousemen to live up to the law.

The history of the regulation of public warehousing, from 1871 to the present time, is not a history of new legislation on the subject although a few important changes have been made. It is rather a history of a stricter enforcement of the laws by the Railroad and Warehouse Commissioners and the Chicago Board of Trade usually after considerable litigation in the courts. A greater cooperation between the Commission and the Board of Trade are largely responsible for the improvement.

3. Litigation Establishing Constitutionality of State Rates. The Railroad and Warehouse Commissioners met in July 1871, in the city of Chicago, for the purpose of organizing the inspection and registration departments provided for by law.¹ Chicago was at this time the only city containing warehouses of class A. The inspection of grain and the registration of warehouse receipts having been heretofore in charge of the Board of Trade of Chicago, the Commissioners, in the main, adopted the rules which the Board had found practicable.² The Commissioners also embodied in their rules the schedule of grades of grain fixed by law. But the Commissioners soon discovered that the rules for grading grain should be flexible, that is, the grades should not be fixed by statute. The authority to establish grades as conditions demanded was given the Commissioners by the next legislature.³

The State inspection system was commenced under great disadvantages; the warehousemen and the railroads refused to abide by the law and the Board of Trade was from the first unfriendly toward the Inspection System and later developed an almost hostile attitude.

The warehousemen continued, as before the act of 1871, to issue fraudulent receipts and also allowed grain to be removed from store without taking up the receipts.⁴ They persistently refused to adopt a system of registration and cancellation on the pretence that it unduly interfered with their private business.⁵

1. Railroad and Warehouse Commissioners' Reports, 1870-71, p. 15.

2. Ibid. p. 15.

3. Illinois Session Laws, 1873-74, p. 141; also vide infra p. 14.

4. Railroad and Warehouse Commissioners' Reports, 1872, p. 15; also Chicago Tribune, 1872, Aug. 23, p. 4, c. 2.

5. Railroad and Warehouse Commissioners' Reports, 1872, p. 40.

But the most flagrant disregard of the law was the warehousemen's failure to take out licenses, give bonds, and abide by the storage rates as established by law. Such open violation of the law gave rise to the first important case, *Munn v. Illinois*,¹ to test the constitutionality of the act of 1871. This is a leading case in establishing the relation between the State as a regulatory power on the one hand and public utilities as subjects for State regulation on the other.

The case was first filed in the criminal court of Cook county, Illinois, against Munn and Scott, public warehousemen of Chicago, lessees and managers of the North Western Elevator. It was alleged that these warehousemen were carrying on the regular business of a public warehouse but had secured no license, given no bond, and were charging higher rates than prescribed by law.²

The case was decided against the defendants in the court of Cook county. Munn and Scott then sued out a writ alleging that sections 3, 4, 5, and 15 of the statute were unconstitutional and void, and carried the case to the Supreme court of the State. The Supreme court decided that the act of 1871, to regulate public warehouses, was not in contravention of the fourteenth amendment of the constitution of the United States. The court stated further: "The constitutional provision prohibiting the deprivation of property is not infringed by a proper law regulating a business which may render property used to carry on the business less valuable. "If the business is still allowed to be carried on, and the property used is allowed to exist, and its possession is not disturbed, the owner cannot be said to be deprived of his property.

"The regulation of warehouses and elevators is a legitimate and pro-

1. 69 Ill. 80.

2. Defendants had been in the warehouse business since 1862.

per exercise of legislative power. All regulation of trade with a view to the public interest, may more or less impair the value of property, but it does not come within the constitutional inhibition, unless they virtually take away and destroy those rights in which property consists,-----"¹

The Supreme court of the State of Illinois affirmed the judgment of the Criminal court of Cook county.

Munn and Scott again sued out the writ, stating that sections 3, 4, 5, and 15, of the Statute of 1871, were repugnant to the third clause of section eight, of article one, and the sixth clause of section nine, of article one, of the constitution of the United States and to the fifth and fourteenth amendment.

The case was decided by the Supreme court of the United States in 1876.² The opinion of the court is best stated as summed up in the syllabus which reads as follows: "1. Under the powers inherent in every sovereignty, a government may regulate the conduct of its citizens toward each other, and , when necessary for the public good, the manner in which each shall use his own property.

"2. It has in the exercise of these powers been customary in England from time immemorial and in this country from its first colonization, to regulate ferries, common carriers, ----- etc., and , in so doing, to fix a maximum of charge to be made for services rendered, accommodations furnished, and articles sold.

"3. Down to the time of the adoption of the fourteenth amendment of the constitution of the United States, it was not supposed that statutes regulating the use, or even the price of the use, of private property necessarily deprived an owner of

1. 69 Ill. 80, Decided in the Sept. term, 1873.

2. 94 U.S. 113.

his property without due process of law. Under some circumstances they may, not under all. The amendment does not change the law in this particular: it simply prevents the States from doing that which will operate as such privation.

"4. When the owner of a property devoted it to a use in which the public has an interest, he in effect grants to the public an interest in such use, and must to the extent of that interest, submit to be controlled by the public, for the common good, as long as he maintains the use. He may withdraw his grant by discontinuing the use.

"5. Right of property, and to a reasonable compensation for its use, created by the common law, cannot be taken away without due process; but the law itself, as a rule of conduct, may, unless constitutional limitations forbid, be changed at the will of the legislature. The great office of statutes is to remedy defects in the common law as they are developed, and to adapt it to the changes of time and circumstances.

"6. The limitations by legislative enactment of the rate of charge for services rendered in a public employment, or for the use of property in which the public has an interest, establishes no new principles in the law, but only gives a new effect to an old one.

"7. Where warehouses are situated and their business is carried on exclusively within a State, she may, as a matter of domestic concern, prescribe regulations for them, notwithstanding they are used as instruments by those engaged in interstate, as well as in State, commerce; and, until Congress acts in reference to their interstate relations, such regulations can be enforced, even though they may indirectly operate upon commerce beyond her

immediate jurisdiction.

"8. The court does not hold that a case may not arise in which it may be found that a State has , under the form of regulating her own affairs, encroached upon the exclusive domain of Congress in respect to interstate commerce.

"9. The ninth section of the first article of the constitution of the United States operates only as a limitation of the powers of Congress, and in no respect affects the States in the regulation of their domestic affairs.

"10. The act of the General Assembly of Illinois, entitled, 'An act to regulate public warehouses and to give effect to article thirteen, of the constitution of this State,' approved April 25, 1871, is not repugnant to the constitution of the United States."

The justice, delivering the opinion of the court, thus clearly stated that a body politic does have the power to enact laws requiring each citizen so to use his own property as not to injure another, "sic utere tuo ut alienum non laedas." "This is the source of the police power. When private property is affected with a public interest, it ceases to be JURIS PRIVATI only." The justice further stated that when one devotes his property to a use in which the public has an interest, he, ineffect, grants to the public an interest in that use. It was definitely maintained that the principle of State regulation was no new principle but had been laid down over two centuries ago.

The above principles are now definitely established, having been twice reaffirmed by the Supreme court of the United States.

The legislature of New York, in the year 1888, passed a law providing for maximum charges for elevating, receiving, weighing, and discharging grain. In a case brought to the Supreme court

of the United States under this act, the court held that the act was a legitimate exercise of the police power of the State over a business affected with a public interest, and did not violate the constitution of the United States and was valid.¹

The State of North Dakota, in 1891, passed an act regulating grain warehouses and the weighing and handling of grain and establishing maximum rates for storage.² In a case coming up under this act the United States Supreme court reaffirmed its former position, declaring the law not in conflict with the constitution, of the United States, but a legitimate exercise of the police power of the State.³

The decision in *Munn v. Illinois* settled the question relative to the State's authority to fix rates in the State of Illinois and there was no further open violation of the law in this respect in the State of Illinois.

1. The Laws of New York, of 1888, Chapter 581.
Budd v. New York, 143 U.S. 517.

2. North Dakota Laws, 1891, C. 126.

3. Brass v. North Dakota, 153 U.S. 391.

4. Underbilling and "Rings" and "Corners". For some time after the passage of the warehouse act of 1871, the railroads continued to under-bill grain, a practice very derogatory to both the grain interests of Chicago and the shippers of grain. The roads failed to weigh the grain at country points and hence were unable to give bills of lading calling for the correct amounts of grain. In many cases grain was billed as "shippers' weight" and bills of lading were given reading "more or less".¹

Underbilling was usually done for the purpose of discriminating in favor of certain shippers, thus relieving them from paying freight on the whole amount shipped. The shipper discriminated against or the shipper too honest to take advantage of the discriminatory rate was thus placed at a disadvantage. The average under-billing ranged from two thousand to two thousand and four hundred pounds per car. Transportation companies also inserted in their bills of lading "conditions, and stipulations exempting themselves as much as possible from their just and reasonable liabilities imposed upon them by statute as common carriers".²

Complaints of grain, arriving by railroad, falling short in weight, as compared with shippers' weight continued for many years.³ But the law was adequate on the subject and only needed

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1. Railroad and Warehouse Commissioners' Reports, 1872, p. 116, 124.
 2. Chicago Board of Trade Reports, 1885, p. XLIV.

The practice of underbilling was not confined to the Chicago district. The Boston Commercial Exchange is quoted as stating that it was their opinion that on all grain shipped from interior points in the West to interior points in the East, an average of ten per cent escaped freight charges. Over-billing and underbilling was also common at Dayton, Piqua, Peoria, and Pittsburg. Railroad and Warehouse Commissioners' Reports, 1872, p. 131 and 138.

3. "A good deal of surprise was expressed on Change today at the fact that the copiously worded report of the Board of Railroad and Warehouse Commissioners' has omitted all reference to the right of the grain owner to receive as much grain as he delivers to the carrier. Between the railroads and the warehouses there is often a very heavy shortage, and the owner of the grain finds it impossible

enforcing. This law requires railroads to weigh the grain received for transportation and to deliver the quantity received.¹

A law providing for the weighing of grain in transit at transfer and junction points was passed in 1887.² Thereafter little complaint of under-billing or short-weight appears in the reports of either the Chicago Board of Trade or the Railroad and Warehouse Commissioners.

A condition, justly complained of by the members of the Board of Trade and the country shippers, was the existence of "corners" and "rings". Such monopolies had existed for many years but they became especially numerous and hence objectionable at this time.³

A group of men constituting the "corner" would at times control the grain market almost completely by buying all the grain or the grain of a certain kind in storage and holding it. No storage room would then be available for country shippers. Nearly all grain received in the city at this time had to pass through public storage and much remained in storage throughout the winter as a result of the closing of water transportation. According to

to obtain his rights. Whether by leaky cars, or by the abomination of unrighteous balances, he now loses a considerable proportion of his property, which he ought not to lose; and he should be protected if the State Commission is any thing better than a farce. As it is now, he is ground between the upper and the nether millstone, and the miller looks on doing nothing." Chicago Tribune, 1874, Jan. 8, p. 6, c. 2.

1. Chicago Board of Trade Reports, 1874, p. 23.

2. Laws of Illinois, 1887, pp. 253.

3. Railroad and Warehouse Commissioners' Reports, 1872, pp. 32ff.

"The Warehousemen's Embargo.

"The arbitrary character of the monopoly under which the warehousing of grain in Chicago is conducted was never more apparent than in the present "corner" in oats or rather, it is a corner in warehousemen's receipts for oats. It is the rule of the trade here, that contracts for the delivery of grain must be filled by the delivery of the paper of any one of certain "regular" warehouse firms acknowledging the receipt of the grain to be delivered on demand. No "regular" contract for grain made "on Change" can

the early practice of the Chicago Board of Trade, all deliveries upon grain contracts had to be made by tender of regular warehouse receipts, registered by an officer duly appointed for that purpose.¹ A practice of the railroads was to enter into agreements with public warehouses to deliver all the grain which they carried to certain elevators.² These conditions make it apparent that any group of men who could get control of the grain in storage and thus lock up the storage room of any one or more warehouses could indirectly prevent the shipment of grain into the city by those roads whose storage room was thus controlled.

The effect of these conditions upon the grain trade of the city was demoralizing. The country shippers sought other markets and other routes.

There is considerable conflict of opinion as to who constituted these "corners" and "rings".³ Undoubtedly in a number of - - - - - be filled in any other way. There might be millions of bushels of any kind of grain standing in cars on the railroad tracks, or in other warehouses than those belonging to the ring, and yet not a bushel of it be available for delivery on a contract until the warehouse monopoly have given their permission by the issue of their receipt for it. - - - It may even have been inspected by the official inspector, - - - and yet it is not grain deliverable on a regular contract until the warehousemen issue their receipt for it.

Under these rules, the warehousemen have complete control of the supply of merchantable grain in the market and can "corner" any particular kind at any time they please- - - " Chicago Tribune, June 6, 1872, p. 4, c. 3.

The "corner" or "oat clique" above referred to, failed within two weeks after the above article was written. Ibid. June, 19, 1872, p. 3, c. 1.

1. Chicago Board of Trade, Reports, 1877, p. XLVI; also Railroad and Warehouse Commissioners' Reports, 1878, p. XXIV.

2. Chicago Tribune, 1872, June 8, p. 4, c. 4.

3. Testimony of John Hill Jr. before the subcommission on agriculture in Chicago, Aug. 12, 1899: "As the Western roads brought grain to Chicago and as the grain business increased they all, or nearly all, built railway elevators, or built elevators as terminal depots for their grain - - . During the period from 1871 until 1887, there was very little if any difficulty in the manner in which the grain was handled in these elevators. The public used them entirely.--- They were handled by disinterested parties engaged solely in the warehouse business, and the independent shippers and receivers of

cases the public warehousemen themselves purchased and held the grain stored in their houses, although it was not until about 1885, that warehousemen made a common practice of storing their own grain.¹

The Chicago Board of Trade took an important step in destroying the power of these grain monopolies by placing a larger number of houses, accessible to owners of grain, upon the same footing as other regular elevators. This move brought relief to hundreds of country shippers who desired to ship their grain to the Chicago market. The grain business of the city was thus benefited.² Further relief came through the increase in the storage capacity of the public elevators, the increase of inspection-upon-arrival, and the through shipment of grain without such grain going into storage. The effective monopolization of the grain market through the cornering of the storage room, therefore, soon came to an end.

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grain in Chicago and at outside points owned and controlled the grain that was stored in these houses - - - -."

United States Industrial Commission Report, Vol. 10, pp. 298ff.

The above quoted testimony hardly agrees with the reports made by the members of the Chicago Board of Trade and the Railroad and warehouse Commissioners.

1. Vide Infra p. 41.

2. Chicago Tribune, 1872, June 8, p. 4, c. 4.

5. State Inspection System and The Chicago Board of Trade. The grain business of the city of Chicago grew rapidly as is evidenced by the following table, compiled from the Railroad and Warehouse Commissioners' Reports and the Chicago Board of Trade Reports.

Table representing the grain business of the city of Chicago; 000,000 omitted:¹

Year;	Total Receipts;	Total Shipment;	Inspection on Arrival;	OUT Inspection;
1870	60	54		
1871	83	71		
1872	88	83	69	69
1873	98	91	69	66
1874	95	84	66	66
1875	81	72	54	51
1876	97	87	61	53
1877	94	90	71	64
1878	134	118	107	77
1879	137	125	115	77
1880	165	154	138	104
1881	146	140	124	85
1882	126	114	99	64
1883	164	141	137	73
1884	159	138	128	58
1885	156	135	131	45
1886	151	129	131	61
1887	163	151	130	75
1888	182	156	147	72
1889	183	179	173	103
1890	227	204	204	85

It will be noticed that the sums given under in-inspection approximate the sums given under total receipts, whereas the sums given under out-inspection decrease rapidly in proportion to total shipments for the respective years. This decrease in the amounts under out-inspection relative to the shipments is due to the fact that an increasingly large amount of grain did not enter

1. Total Receipts and Shipments' figures are taken from the Chicago Board of Trade Reports: 1871, pp. 36-37; 1891, pp. 18-19;

Inspection figures are taken from the Railroad and Warehouse Commissioners' Reports: 1879, p. 280; 1883, p. 476; 1890, p. 34.

There are slight discrepancies between the figures given in the reports for the current years and the figures given in the condensed tables covering longer periods of time.

store, hence was inspected only once, that is, inspected on arrival. The percentage of grain transferred on track grew from thirteen per cent in 1876, to twenty percent in 1880, and to fifty-seven per cent in 1885.¹

The work of the inspection department increased with the growth in the grain trade of the city of Chicago. The storage capacity of the Chicago public elevators increased from 10,200,000 bushels in 1872, to 36,550,000 bushels in 1897; and all grain entering store was both in-inspected and out-inspected. Also most of the grain not going into store, but sold on track, was inspected by the State department.²

There is no agreement in the opinions of the Chicago Board of Trade and the Railroad and Warehouse Commissioners on the merits of the State system of grain inspection. In the majority of the Railroad and Warehouse Commissioners' Reports the system is highly praised. The Commission, for example, claims that the certificates of the Chicago inspection department are "good the world over."³ The criticisms of the members of the Chicago Board of Trade on the merits of the system are at times favorable and at times unfavorable. In 1884, the State inspection system is highly praised in their official reports.⁴ The management of the inspection department is declared a guarantee of safety and accuracy. In the Boards' reports for the year 1896, is found the following statement: "When the inspection of grain was surrendered by this board to the State- - - we had reason to expect faithful and uniform administration of the service. For many years we had no ground for

1. Railroad and Warehouse Commissioners' Reports, 1886, p.553.

2. Ibid., 1872, p. 36; and Ibid., 1898, p. 203.

3. Ibid., 1892, p. 18.

4. Chicago Board of Trade Reports, 1884, p. XI; Ibid., 1896, p. LXXXVI.

serious complaint, but it has gradually become a useful part of machine politics, and ward heelers are crowded upon the pay rolls---. The inspection department should be placed under the merit system."¹ Again in their report of 1899, is found the following criticism: "Our cash grain trade----has suffered through abuse of the practice of mixing grades of wheat and through the incompetence of our State Inspection. This seems to be true of many American markets, but especially of Chicago. Within a twelve month, public meetings of grain merchants in England have been held to devise new methods of handling American grain, owing to the unreliable character of American grades and certificates, and bitter complaints have come to private individuals and to the officials of our board. As recently as last Wednesday press cables from Marselles stated that owing to dishonest grading at American Gulf ports that market would handle no more American wheat except on sample. Times were when under the Chicago Board of Trade inspection our certificates passed current as money in any market of the world. It is high time that the system receive an overhauling ----. Should we not seek the means for restoring Chicago Board of Trade inspection in this market to replace the political machine?"²

The changes in the attitude of the Chicago Board of Trade are undoubtedly due to several reasons. The attitude of the Board during the early years of the State inspection system was unfriendly owing to the fact that the inspection of grain was taken out of their hands and to changes in grades of grain which were often sudden and abrupt. But soon the committee of appeals was established and members of the Chicago Board of Trade constituted the committee.

1. Chicago Board of Trade Reports, 1896, p. LXXXVI.

2. Ibid., 1899, p. 31.

Thus their decision in disputed cases was final.

As late as 1884, the State inspection system is highly praised. But in the following year a law was passed prohibiting the appointment of Chicago Board of Trade members on the committee of appeals. The apparent reason for the enactment of this law was the increase in appeal cases. In 1874, 150,303 cars and canal boats of grain were inspected and only 74 appeals were taken from the State inspectors to the committee of appeals. In 27, out of the 74, cases the grades were raised.¹ In 1876, there were 153 appeals taken; in 54 cases the grades were raised.² Three years later 1,140 appeals were taken.³ The decision of the appeals' committee was final, therefore, to the extent that the appeals increased, the Board of Trade of Chicago became the inspector of grain and the State system came into disrepute or was discredited.⁴

This change in membership of the appeals' committee took the inspection of grain, going into store, and also that inspected "on track" by the State, completely out of the control of the Board of Trade and was conducive to making the Board's attitude unfriendly. But it is not to be supposed that the Board was without other grievances. The inspection was often defective in many respects.

A committee on railroads appointed by the State Senate to investigate certain charges made against the inspection system reported that the following charges had been confirmed: Neglect on the part of the Railroad and Warehouse Commissioners to enforce the

1. Railroad and Warehouse Commissioners' Reports, 1874, p. 31.

2. Ibid., 1876, p. 35.

3. Ibid., 1879, p. XXX.

4. It is impossible to ascertain whether the committee on appeals was justified in making the changes in the grades of grain in the appeal cases. If the changes made were justifiable, the discrediting of the State inspection system effected thereby ought to have served to improve the system and not to eliminate the Chicago Board of Trade members.

law against collection of charges for "track service," "switching" and "demurrage" in direct violation of the law of 1871; chief inspector relieved of his official duties by assistants to the detriment of the service; compromising the standing of the inspection department by retaining on the service an inspector against whom there had been pending charges of disreputable and corrupt official conduct.¹

Political favoritism rather than efficiency as determining the appointment of inspectors is frequently charged.² A general inflexibility in the grading system due to inefficiency or ignorance on the part of the Railroad and Warehouse Commissioners is a common cause of complaint.³

At various times appeals were made to the General Assembly by the Chicago Board of Trade to change from the State back to the Board of Trade inspection.⁴

These complaints, though probably exaggerated, cannot be entirely discredited. That the Board of Trade had cause for com-

1. An inspector referred to had been exposed as grading more than one thousand cars of grain ---dates and numbers of cars given---without in a single instance having passed into the doors of the cars thus graded. Senate Journal, 1881, March 24, pp. 464ff.

2. Editorial in substance; Chief grain inspector, Harper, used State funds to the amount of \$17,000 and speculated in grain. The Commission investigated and reported the matter to the Governor. It is said that the report was returned to them by the Governor for amendment. It was amended and again presented. In the meantime the Commission refused to make the report public. Chicago Tribune, Feb. 27, 1874, p. 4, cc.6 and 7.

"Illinois Grain Inspection Laws.

"No grain reaching Chicago can be inspected except by a politician who supports some particular person for United States Senator. That the State inspection of grain has never been intrusted to an expert and even if the inspector were an expert, he has no discretion but must rate grain according to certain rules made by a board of Commissioners profoundly ignorant of all things pertaining to the subject. ---The inspection laws of this State were invented and framed to injure and divert business from this city."

Chicago Tribune, July 30, 1875, p. 4, c. 2.

3. Ibid.

4. Report in substance by the Board of Trade to the Legislature:

plaint is apparent from the fact that in 1904, the Board established a grain sampling and seed inspection department for the resampling of grain consigned to and shipped from the Chicago market. This department was established in response to a general demand from the grain merchants of the East and the West as well as those of the Chicago exchange.¹ This department works in harmony with the State grain inspection department.²

By a ruling of the Interstate Commerce Commission and the Illinois Railroad and Warehouse Commission the railroads are compelled to allow the necessary time for the resampling of inspected grain. This saves demurrage charges on grain which requires a resampling.³

The methods of inspecting grain were improved from time to time. The old method was to inspect the grain from the cars in the elevator yards. Later for lack of room it was done in inspection yards remote from the elevators.⁴ By 1885, in-inspection stations were established on ten of the railroads and on one canal. There were at this time out-inspections at each of the twenty-six elevators. Early in the morning the daily reports from all of these stations were gathered and brought to the inspection office.⁵

 "1. Law of 1871, is only local in its application-----

"2. The Law deprives owners of their natural rights to ---classify their property into grades before offering it for sale.

"3. The Law places the State of Illinois in the apparent position of levying a tax upon the commerce of other States-----

"4. The Law imposes an unnecessary tax upon the grain producing interests of this and other States.

"5. The Law makes it the duty of the State to do that which citizens ---can do much better--

"6. Appointees are often unfit for the business--

"7. Experience of other States has proven that State inspection is oppressive. Chicago Tribune, March 6, 1877, p. 3, c. 1.

1. Chicago Board of Trade Reports, 1904, p.(51) LI.

2. Ibid., 1905, p. XLIV, and 1909, p. XLIV.

3. Ibid., 1910, p. XXXV.

4. Railroad and Warehouse Commissioners' Report, 1886, p. 551.

5. "Under the old system of 'track' inspections, in use when I

In 1908, a system was established whereby all grains are inspected from sample taken from the car in the inspection office. The system was found to be a great improvement over the older methods as grain could be more carefully inspected.¹ In the following year provision was also made for inspecting in the office all grain inspected "out".²

A law providing for the consolidation of all the branches of the State grain inspection department into one department and under one chief inspector of grain was passed by the legislature in 1907. This change tends to establish a uniformity in the grades of grain inspected and graded in the various places having State supervision of inspection.³ The Chicago inspector was made the head of the department. The same act, which is a revision of the act of 1871, provides that "no grain shall be received into any private elevator located in cities having a population of 100,000 inhabitants or more until such grain shall have been inspected by a duly authorized inspector."

began my administration, much complaint arose because of unsatisfactory gradings.----Now we have office inspection. In track inspections, the gradings of grain were determined by a single inspector whose work was done at the cars on railroad tracks. In office inspections, the grades are determined by a corps of inspectors at the central office of the Grain Inspection Department. Under the new system, much greater accuracy and uniformity of inspections is possible.

"One day for example 1,800 cars of grain were inspected from sample. Only 42 re-inspections were called for; of these 15 only were changed." Governor's Message in Journal of The Senate 1913, pp. 67ff.

The conflict between the Chicago Board of Trade and the Railroad and Warehouse Commissioners, whether the latter was at fault to the degree reported, or not, was necessarily responsible for improvement in the inspection of grain.

1. Railroad and Warehouse Commissioners' Reports, 1908, p. 557.

2. Ibid., 1909, p. 500. Laws of Ill., 1907, p. 492.

6. Warehouses of Classes "B" and "C". Under the warehouse act of 1871, warehouses of classes B and C escaped all State regulation for many years. Some general provisions of the law relative to receipts, handling of grain, and the mixing of grain apply to warehouses of these classes but no officers were provided by the law to enforce them.

In 1878, the Railroad and Warehouse Commissioners requested all the owners and managers of public warehouses of classes B and C to make reports on their business in accordance with the requirements of the law. Blanks were sent to 1,180 public warehousemen but only 65 replies were received.¹ In the following year a law was passed providing that in cities or counties in which are located warehouses of class B an inspector of grain should be appointed by the governor upon the application and petition of two or more warehousemen doing a separate business. If there were a legally organized Board of Trade in such city or county such Board must ratify the petition.²

This law cannot have been passed with any serious intention on the part of the legislature for the reason that it must have known well that boards of trade were not anxious to turn the inspection of grain over to State control. Irrespective of the number of warehousemen desiring the appointment of State inspectors of grain, the Board of Trade of such place could thwart their efforts.³

1. Railroad and Warehouse Commissioners' Reports, 1878, p. XXI.

2. Laws of Illinois, 1879, p. 227.

3. No data were available to the writer showing cases, provided there were such cases, in which two or more warehouses petitioned the governor of the State for State supervision of grain inspection. The fact that no State inspection was instituted in any city or county under the law of 1879, makes it apparent that every such petition from cities or counties, containing a legally organized Board of Trade, failed to receive the ratification by such Board.

The Board of Trade of the city of East St. Louis appointed inspectors of grain. Under its charter it had such power to appoint inspectors whose decisions were binding upon the members of the Board and upon all others assenting thereto. But such inspectors had no power to act in any other case according to the State law. The East St. Louis Board however made its inspections binding and obligatory upon all warehousemen, collecting regular fees for their services. In a case, carried to the Supreme State Court, involving an action against the East St. Louis Board, the court stated that the Board had no authority, either by virtue of its charter or by virtue of the law of 1871, to exact fees and compel the inspection of grain of warehousemen other than members of their own organization.² The court further maintained that in all places where there were no legally appointed inspectors, the warehousemen might continue to carry on their business without inspection if they so preferred.³

State inspection of grain continued to be confined to Chicago for many years. In 1897, however, the legislature acting upon the recommendation of the Railroad and Warehouse Commissioners passed a new law providing that the appointment of grain inspectors of public warehouses of class B should be made upon the recommendation of the above Commissioners. The Commissioners were to act upon the request of the county commissioners or board of supervisors of the county where the warehouses were situated.⁴

1. The charter of the East St. Louis Board of Trade is similar to charter granted to the Chicago Board of Trade.

2. For a number of years the grain dealers of Chicago refused to pay inspection fees under the law of 1871. By order of the Railroad and Warehouse Commissioners thirty suits were started and judgment obtained in each case. Railroad and Warehouse Commissioners' Reports, 1874, pp. 30ff. et 91 Ill. 357.

3. 105 Ill. 382. (1883)

4. Laws of Illinois, 1897, p. 300.

The first county board to file a petition under this law was that of St. Clair county. An inspector was at once appointed and the Railroad and Warehouse Commissioners took possession of the inspection at East St. Louis on the first of August, 1897.¹ For many years the inspection had been in the hands of the Merchants' Exchange of St. Louis, Missouri. Five years later there was established in connection with the inspection department at East St. Louis, a weighing department over which the Railroad and Warehouse Commission had supervision.²

By 1907, there were five cities in addition to Chicago with State supervision of grain inspection.³ Warehousing in other cities throughout the State remained without State supervision until the passage of the State Utilities act in 1913.

1. Railroad and Warehouse Commissioners' Reports, 1897, p. XI.

2. Ibid., 1902, p. 371.

By 1906, there were inspected in and out of regular warehouses at East St. Louis 24,293 cars; from private elevators 3,973 cars. Ibid., 1906, p. 485.

3. East St. Louis, Decatur, Kankakee, Joliet, and Springfield.

State inspection at the last four mentioned cities was maintained for a period of five years and then abandoned; apparently because of the small amount of grain received. Ibid., 1907-1911.

7. State Regulation of Weighing. One serious defect in the laws relative to the supervision of public grain elevators was the lack of provisions for State control of the weighing of grain going into and out of these elevators.¹

Warehouses early made a practice of accumulating surpluses of grain which they called accidental; and there was no way to prove the contrary.²

In 1883, a law was passed providing for the appointment by the Railroad and Warehouse Commissioners of a State weighmaster and necessary assistants in all cities having State grain inspection. Such weighmaster and assistants were not to be members of any board of trade or association. The rules for the weighing of grain were to be made by the Commissioners.³

The law contained one serious defect; the funds for the maintenance of the State weighing system were to be secured from fees collected from buyers and sellers, which means from receivers and shippers of grain who are usually members of the Board of Trade.

It was at the request of the Chicago Board of Trade that the law was passed. The Eastern roads had refused the Board's weighmaster access to their scales for some time and they were unable to compel them to submit to their inspection. But the Board of Trade wanted the authority to appoint the weighmaster and when that power was denied them they failed to co-operate with the weighmaster.

1. Whole trains were pulled upon and over the scales and weighed while in motion and without uncoupling. Cars when full were weighed, left in the rain when empty and then re-weighed. Railroad and Warehouse Commissioners' Report, 1883, p. 493.

2. One elevator accumulated during one year 9,029 bushels of corn and 1,479 bushels of oats. Ibid., 1874, p. 42.

3. Laws of Illinois, 1883, p. 172.

The city weighmaster also refused to co-operate with the State department. Trouble arose, funds were lacking, and the State weighmaster resigned.

The weighing at the Chicago elevators was again left to the Chicago Board of Trade.¹ Later the Board also extended its supervision over scales at country points.²

1. Chicago Board of Trade Reports, 1904, p. L, and LI.

2. "In 1915, the Board inspected 51 scales at interior points, 37 of which were found to weigh incorrectly, and 483 scales were tested in the Chicago district of which 143 were found defective." Chicago Board of Trade Reports, 1915, p. XXXV.

8. Central Elevator Cases: Public Warehousemen Enjoined from Mixing Their Own Grain with That of Their Patrons. Prior to the year 1887, Chicago elevators were mainly owned by warehousemen and railroads who had no direct interest in the grain stored therein, only as occasional "corners" were formed by the socalled elevator "rings".¹ But within a few years after the passage of the Interstate Commerce Act of 1887, the elevator interests became important dealers in grain and hence became directly interested in the grain stored in their warehouses.² The principal reason for this change was the prohibition of the granting of rebates by the Interstate Commerce Act. For a number of years the granting of rebates to shippers of grain had been a common practice. It was one of the most effective means of meeting the competition of the roads carrying grain by other routes to the Eastern markets. After the passage of the Interstate Commerce Act it became necessary for the railroads to grant these rebates more secretly. This was most effectively accomplished by entering into agreements with a few large dealers in grain. In many instances the railroads leased to these grain dealers their own terminal elevators at nominal rates, in other instances the owners of warehouses became directly interested in the buying and selling of grain. The owners were also frequently large stockholders in railroad corporations.³ The competition of other

1. United States Industrial Commission Reports, Vol.X, pp. XLIX.

2. Ibid., p. L.

3. Records to show that the railroads were to a greater or less extent, either directly or through their officers interested in the elevators: "The following is a copy of the list of stockholders of the Central Elevator Company, the terminal elevators of the Illinois Central Railroad Company. This list of stockholders contains the name of almost every officer of that road, including the party who was president and one who has since been president:

(Central Elevator Company, Record No.21, p.323. Incorporated in Illinois, Dec. 13, 1886, for 99 years. Capital Stock, \$100,000--1,000 shares, \$100 each.)

roads could now be met by granting secret rebates to these grain merchants. The Minneapolis grain interests had been drawing upon the grain of Iowa and Nebraska, shipping the same via Duluth and the Great Lakes' route and the St. Louis interests had been attracting grain from other territory tributary to Chicago, shipping it by way of the Mississippi River to the Eastern markets and abroad.¹

Another important reason for the change in the system of handling grain in Chicago was the practice of selling grain upon "track" by "sample". Heretofore most of the grain going through Chicago had entered storage, sale being made by delivery of warehouse receipts. The practice of through-billing was also instrumental. The effect of these practices was to greatly reduce the amount of grain that went into store in Chicago.² The warehousemen soon realized that they must buy the grain in order to maintain the storage business and the railroads who were frequently the owners of the warehouses gladly co-operated with them.³

It is difficult to determine what the effects of the system were upon the prices of grain, hence upon the producers. From the conflicting evidence presented in the city of Chicago before a sub-committee of the United States Industrial Commission, it would appear that the grain merchants of Chicago who did not receive

"Original Stockholders;

Name,	Shares,	Value,
J.C. Clarke,	150	15,000
John Dunn,	100	10,000
A.G. Hackstaff,	100	10,000
S. Fish,	150	15,000
E.T. Jeffrey,	150	15,000
J.C. Welling,	150	15,000
Henry De Wolf,	100	10,000
C.A. Beck,	100	10,000
Total	1,000	\$100,000 "

United States Industrial Commission Report, Vol. X, p. 296.

1. Ibid., Vol. IV, p. 383. 2. Ibid., Vol. X, p. 299.

3. Rules regarding grain consigned to Chicago by railroads:

"Illinois Central Railroad Company,

Chicago, Illinois, May 3, 1895.

rebates were most seriously effected. These were placed in a position where they could not compete with the more favored grain merchants.

Bitter complaints against this system of handling grain first came from the Chicago Board of Trade.¹ The president of the Board, Wm. T. Baker, characterized the system as immoral and derogatory to the grain business of Chicago. In the following year, 1895, the board of directors gave as their opinion that it was against sound public policy for public custodians of grain, upon whom the State had conferred special privileges for the single purpose of serving the people upon equal terms, to be dealers in grain.²

On March 8, 1895, written complaints were presented to the Railroad and Warehouse Commissioners by the warehouse committee of the Chicago Board of Trade asking that the licenses of thirteen public elevators be revoked upon the grounds that they were violating the law in mixing their own grain with that of their depositors. The Commissioners decided that the practice was contrary to law and revoked the licenses of nine elevators.³ The warehousemen however refused to abide by the decision of the Railroad and Warehouse Com-

 "To agents, shippers, and receivers of grain:

This company having ample storage room for grain in elevators on its own tracks in Chicago, will not on and after this date, receive grain consigned to elevators off its lines in Chicago ---- without extra charge." U.S. Industrial Commission Report, Vol.10,p. 304.

1. Chicago Board of Trade Reports, 1894, p. LXVI.

2. Ibid., 1895, p. LXII.

3. The Central Elevator Company; George A. Seaverns; South Chicago Elevator Company; Armour Elevator Company; Charles Counselman; Chicago Railway Terminal Elevator Company; Nebraska City Packing Company; Chicago Elevator Company; Alexander C. Davis. 174 Ill. 203.

The Warehouse Commissioners, however, had no jurisdiction to revoke Class A licenses. Section three of the act of 1871, confers upon the local circuit court exclusive jurisdiction to issue and revoke licenses to Class A warehouses. 64 Ill. App. 273 affirmed; 168 Ill. 165.

missioners and continued their former practices. The attorney general brought the cases before the circuit court of Cook county. This court enjoined the defendants from mixing their own grain with that of their depositors to the detriment of the other grain merchants.¹ The defendants immediately appealed to the Supreme court of the State. All cases appealing on the same grounds and charged with the same violation of the law were argued as one case.

It was argued by the appellants in substance as follows:

"The warehouse act of 1871, does not make it unlawful for the warehousemen to store their own grain in their warehouses.

"The long practical construction given to the act, as to the right of warehousemen to receive and store their own grain with the grain of others, should be conclusive of the question of construction.

"The relief in equity, prayed for by the informations, is barred by continuous acquiescence in the well known practice and methods of the business of warehouse proprietors in storing their own grain during the period of twenty-three years.

"The decrees in the cases against the Central Elevator Company, and others, are erroneous in enjoining the stockholders, and the companies themselves, from storing the grain of the stockholders."

It was also argued that elevators prior to the passage of the act of 1871, stored their own grain and mixed it with that of their depositors, and that the Supreme court had recognized such practice.²

The opinion rendered by the State Supreme court in this case is in substance as follows:

"A warehouseman may be enjoined from using his license so as to suppress competition in trade in the articles stored in his warehouse.

1. Vide 174 Ill. 203.

2. Low v. Martin, 18 Ill. 286.

"A public warehouseman will not be permitted to deal in grain and store such grain in his own licensed warehouse. Stockholders of such a corporation are likewise prohibited from storing their grain in their warehouses.

"Failure on the part of warehouse commissioners to stop such practice or to question its legality does not amount to a practical construction of the statute providing for licensing warehouses so as to show that it authorizes such conduct."

The attorney general stated in behalf of the appellee that there was no evidence that the practice complained of existed before 1885, and that the older view, that is before 1860, held that the deposit passed the title in the grain to the warehouseman, placing the transaction on the same basis as the deposit of money in a bank. But that this view had occasioned much injustice to the depositors of grain, and that now generally, either by statute or judicial determination, it had become the law that a deposit of grain in an elevator is a mere bailment and does not pass the title to the grain. In Illinois this change has been effected by statute.¹

The court further charged the appellants with being monopolists of the Chicago grain market, being the owners of three-fourths of all the grain received in the public warehouses of the city. These charges were not denied by the defendants who were large dealers in futures on the Chicago Board of Trade.

According to the court as well as according to the Chicago Board of Trade Reports and the evidence presented before the subcommittee of the United States Industrial Commission the warehousemen's position gave them a very peculiar advantage. Their chief advantages were said to be: "First, he pays no storage on the grain,

1. Vide, 55 Ill. 44.

or pays storage to himself, so that the possession of the elevator operates as a rebate; Second, he is able to select the best grain of a given grade and keep it for himself as merchant, giving the public the 'line' grade, or grain just good enough to pass inspection."¹ The court charged that the warehouse proprietors often overbade other dealers as much as a quarter of a cent a bushel, and immediately resold the same to a private buyer at a quarter of a cent less than they paid and then exacted storage charges and recouped themselves.

The supreme court affirmed the decision of the circuit court of Cook county. But before the Supreme court had rendered its decision the legislature at Springfield had passed an act on warehousing which contained a clause that specifically conferred upon the proprietors, lessees, or managers of public warehouses the authority to store in any warehouse owned by them, grain of their own and mix it with the grain of others of like grade stored therein. They were also authorized to purchase warehouse receipts representing grain on store in such warehouse.²

After this act was adopted and after the decree of the circuit court of Cook county was affirmed by the State Supreme court, J.S.Hannah, manager of the Central Elevator Company, continued to store the grain of the elevator company in the warehouse of the company, claiming that the act of 1897 granted him such authority. J.S.Hannah was tried in the circuit court of Cook county, adjudged guilty of contempt of court and fined one hundred dollars. The case was again appealed to the State Supreme court. The act of 1897 was declared unconstitutional on the grounds that it was out of harmony with the constitution of the State. The court maintain-

1. Report of the United States Industrial Commission, Vol.X, p.L.
2. Illinois Session Laws, 1897, p. 302.

ed that a party cannot be a qualified trustee if he has interests which run counter to the interests of those for whom he acts as trustee. The court stated that a public warehouseman was not prohibited from storing his own grain in vacant places in his own warehouse where the space so vacant was not needed for the storage of grain of customers of the warehouse.¹ The judgment of the circuit court was affirmed.²

A result of the decisions in the Central Elevator case and the J.S.Hannah case was the change of a number of public warehousemen to private warehousemen. The Railroad and Warehouse Commissioners report in 1898, a decrease of 5,500,000 bushels in the public elevator capacity during the preceding year.³ Central Elevator "A"(1,000,000 capacity.) and Santa Fe "A"(1,500,000 capacity.) voluntarily surrendered their licenses and became private warehouses. During the following year another decrease is reported. The capacity of public elevators decreased from 31,050,000 bushels to 25,400,000 bushels.⁴

This reduction in capacity of public warehouses made their storage room less than the storage room of private elevators by 7,000,000 bushels.⁵ During the following year a number of private warehouses took out licenses increasing the storage capacity again to 31,900,000 bushels. For a number of years thereafter there was very little change in the capacity of public warehouses.⁶

1. 198 Ill. 77.

2. The same principle was set forth by the court in Lichtstern v. Rosenbaum Grain Company, 176 Ill. App. 250, (1913)

3. Railroad and Warehouse Commissioners' Reports, 1898, p. 203.

4. The Rock Island "B", Peavy "B", and the St. Paul and Fulton Annex became private warehouses. Ibid., 1899, p. 94.

5. Ibid. 1899, p. 94.

6. The Iowa was made a private elevator but the Calumet "B" and "C" Armour "C", Peavy "B", St. Paul and Fulton Annex, and the Galena were made warehouses of class "A". Ibid., 1900, p. 89.

9. The Public Utilities' Act and Warehousing. The act of 1913, "An act to provide for the regulation of public utilities", has effected a number of important changes in State supervision of public warehouses.¹ Section 10, of article I, of the act defines the term "public utility" to mean: "Every corporation, company, association, joint stock company, or association, firm, partnership or individual ----(except, however, such public utilities as are or may be owned or operated by any municipality), that now or hereafter: (A) may own, control, operate or manage within the State, directly or indirectly, for public use, any plant, equipment or property, used or to be used---for the storing or warehousing of goods."

The Illinois Public Utilities Commission, created by the act and succeeding to the powers and duties of the Railroad and Warehouse Commissioners, maintains in its reports that it has wide jurisdiction which covers every class of storage business that may be done for compensation. The Commission states that it is compensation, and not the particular nature of the business that determines its legal status.² According to the Commission's reports the law has placed under its regulation many forms of business which heretofore have not been subject to State supervision, such as cold storage houses,---general storage, transfer and forwarding warehouses, all classes of grain elevators, and other storage business conducted for a compensation.³ The Commission embodied the above principle in Conference Ruling No. 12.⁴ It thereupon ordered that every proprietor, lessee or manager of a public warehouse of classes A, B, and C, as above defined, should immediately file with the Commission, and should keep open to public inspection schedules

1. Laws of Illinois, 1913, p. 459 ff.

2. Illinois Public Utilities' Commission Report, 1914, Vol.1, pp.15.

3. Ibid., pp. 14-15.

4. Ibid., pp. 72-73.

showing all rates and charges. It was also made obligatory for such warehousemen to secure a certificate of "public convenience and necessity", in order to conduct such business.¹

Many country elevators were conducting a storage business. There consequently came under the control and supervision of the Commission. But most of the elevators doing such storage business for compensation either ceased charging storage rates or ceased the storage business entirely. Out of a total of 2,441 elevators doing business in the State, only 58 reported as doing a public storage business in 1914.²

The jurisdiction of the Commission over the cold storage business was at first questioned. But in 1915, it was definitely established by the Supreme court of the State that such business is subject to the jurisdiction and control of the State Public Utilities Commission.³ The defendants in the case, The monarch Refrigerator Company, argued that the Public Utilities act defined the term warehouse as including all grain elevators and storehouses where grain is stored for compensation, and that therefore cold storage warehouses were not subject to the control of the Commission. The court maintained that the spirit of the act as a whole had to be considered and that the maxim "*expressio unius est exclusio alterius*" did not apply.

According to the Civil Administrative Code of 1917, distributing the administrative functions of the State government among nine departments, the regulation of cold storage warehousing is placed under the control of the department of agriculture.⁴ The

1. Ill. Public Utilities Commission Reports, 1914, Vol. I, p.73.

2. Ibid., p.15.

3. 267 Ill. 528. The Monarch Refrigerator Company, defendants in this case, have plants covering several acres having a storage capacity for about 4500 carloads of goods.

4. The following is in substance the Cold Storage Act passed in

regulation of other kinds of warehousing, together with the inspection of grain is placed under the department of Trade and Commerce. The Public Utilities Commission, created by the Act of 1913, and which took over the functions of the Railroad and Warehouse Commissioners, exercises its powers and duties under the direction of the department of Trade and Commerce.

in the year 1917. "The Uniform Cold Storage Act"

"Section 1. For the purpose of this act 'cold Storage' shall mean the storage --- of articles of food at or below a temperature above zero of 45 degrees Fahrenheit in a cold storage warehouse; 'cold storage warehouse' shall mean any place artificially cooled to or below a temperature above zero of 45 degrees Fahrenheit, in which articles of food are placed and held for thirty days or more; 'articles of food' shall mean fresh meat and fresh meat products and all fish, game, poultry, eggs and butter.

"Section 2. No person, firm or corporation shall maintain or operate a cold storage warehouse without a license so to do---- The license shall be issued upon payment ----of a license fee of \$25.00 per annum-----.

"Section 3. In case any cold storage warehouse -----shall --be deemed by the department of Agriculture to be in an unsanitary condition, he shall notify the licensee ---and upon failure of the licensee to put such cold storage warehouse in a sanitary condition ----he shall revoke the license.

"Section 4. Every such licensee shall keep accurate records of the articles of food received in and of the articles of food drawn from his ----warehouse.

"Section 6. No article of food intended for human use shall be placed,---received or kept in any cold storage warehouse, if diseased, tainted, -----or in such condition that it will not keep wholesome for human consumption.-----

"Section 7. No person, firm or corporation shall place, receive or keep in any cold storage warehouse --- articles of food unless the same shall be plainly marked,-----with the date when placed therein and no person----shall remove --such articles of food from any cold storage warehouse unless the same shall be plainly marked,---with the date of such removal,---.

"Section 8. No person,----shall hereafter keep ----in any cold storage warehouse any article of food which has been held in cold storage ---for a longer aggregate period than twelve months, except upon the approval of the Director of the department of Agri--

"Section 9. It shall be unlawful to sell,---any article of food which has been held for a period of thirty days or more in cold storage --- without notifying persons purchasing,---the same, that it has been so held, by the display of a placard plainly ---marked, 'Cold Storage Goods',-----.

"Section 10. It shall be unlawful to return to any cold storage warehouse any article of food which has been once released from storage for the purpose of placing it on the market for sale.----."

Laws of Illinois, 1917, pp. 648ff.

10. Liability of Warehousemen. Warehousemen are obligated to exercise only ordinary care in the preservation of grain which is stored with them. This principle has several times been laid down by the Supreme court of the State.¹

In case a warehouseman agrees to keep grain separate in a particular bin, such grain must not be removed to another bin without the owner's consent. In case of grain so removed, the grain is in any way injured or destroyed, the warehouseman is liable for the full amount.² The warehouseman, in the absence of any injury to the grain, is nevertheless guilty of a breach of contract.³

In all cases what constitutes ordinary care and diligence depends upon the circumstances, on the nature of the company's agreements with his depositors, on the confidence which he invites, and on the value and nature of the deposit.⁴

A warehouseman is also presumed to know the ordinary character or nature of the articles of daily use which are stored in his warehouse.⁵

1. 31 Ill. 353, (1863); 102 Ill. App. 406; 200 Ill. 354, (1902).

2. 51 Ill. 520, (1869);

3. 126 Ill. App. 349, (1906).

4. 117 Ill. App. 652.

5. 200 Ill. 354, (1902).

11. Negotiability of Warehouse Receipts. Prior to the Act of 1907, warehouse receipts of all kinds have been declared non-negotiable instruments by the courts of the State of Illinois.¹ In *Burton v. Curyea* it was held that "warehouse receipts, not being negotiable instruments in a technical sense, merely stand in the place of the property itself, and a delivery of such receipt transfers the title to the property in the same manner as would the delivery of the property itself."²

In the following year, 1867, an act was passed which declared all receipts for grain, issued by any warehouse, negotiable by indorsement in blank or by special indorsement, in the same manner and to the same extent as bills of exchange and promissory notes.³ No cases of importance seem to have arisen under the Act while it was in force.

In the Act of 1871, there is found a section which reads in part as follows: "Warehouse receipts for property stored in any class of public warehouses,-----shall be transferable by the indorsement of the party to whose order such receipt may be issued, and such indorsement shall be deemed a valid transfer of the property represented by such receipt, and may be made either in blank or to the order of another---." ⁴ This act of 1871 repealed the warehouse Act of 1867 and with it the section declaring warehouse receipts negotiable.

The first important case to arise under the act of 1871, relative to the negotiability of warehouse receipts, was *The Canadian Bank of Commerce v. Samuel H. McCrea*, filed at Ottawa 1882. The

1. Laws of Illinois, 1907, pp. 477ff.

2. 40 Ill. 320, (1866).

3. Illinois Public Session Laws, 1867, pp. 177ff.

4. Laws of Illinois, 1871, pp. 762ff.

State Supreme Court at this time declared that the warehouse receipts were not made negotiable by the Act of 1871 and further the court was not of the opinion that the act of 1867 was intended to change the decision rendered in *Burton v. Curyea*, 40 Ill. 320, 1866. The court also stated that the negotiable instruments act did not embrace warehouse receipts or bills of lading, and instruments of that class.¹ The Act reads: "Promissory notes, bonds, due bills, and other instruments in writing, made or to be made by any person, body politic or corporate, ---whereby such person promises or agrees to pay any sum of money or articles of personal property, ---or acknowledges any sum of money or article of personal property to be due to any other person are negotiable."²

In 1907, a very comprehensive law was passed relative to the negotiability of warehouse receipts and the liability of warehousemen who issue such receipts.³ This Act provides that any warehouseman may issue warehouse receipts; such receipts to state the location of the warehouse, date of issue, description of goods, storage rate, and whether the goods received shall be delivered to the bearer, specified person or his order. A receipt stating that the goods are to be delivered to the depositor or any specified person is declared non-negotiable. One stating that the goods are deliverable to bearer or order is declared a negotiable receipt.

A warehouseman who delivers goods to one not lawfully entitled to them or who fails to take up a negotiable receipt on delivery of the goods is liable.

It would appear from the above quoted act as though warehouse receipts, stating that the goods are deliverable to bearer or

1. 106 Ill. 281, (1882).

2. Hurd's Statutes, 1881, Chap. 114, Sec. 142.

3. Laws of Illinois, 1907, pp. 477ff.

order, are negotiable instruments. But the courts have not so interpreted the law. In *Manufacturer's Mercantile Co. v. Monarch Refrigerating Co.*, the court held: "Warehouse receipts are not negotiable in a legal sense so as to enable the person holding them to transfer a greater right or title to the property mentioned in them than he himself had."¹

This decision apparently put warehouse receipts back into the non-negotiable class of commercial paper.

1. 266 Ill. 584; 169 Ill. App. 562.

12. Concluding Remarks. The effects of the State's supervision of the inspection and storage of grain upon the grain trade of the city of Chicago are difficult to determine because of the many other factors affecting the business. The warehouse legislation, as has been shown, was passed for the most part previous to 1872 when the interests of the people were predominantly agricultural.¹ The farmers were considered and called the "producing class" as distinct from the railroad and mercantile interests.² The critical, if not hostile, attitude of the farmers toward the railroads and warehousemen during this early period was part of the Granger Movement which pervaded the entire Northwest.³ The erroneous conception that the farmers are in a very peculiar sense the sole producing class was still strong. The other more defensible conception was that the "producers" needed protection. The same ideas are found in the early pure food legislation. The oleomargarine laws, for example, were passed, not to protect the consumer but the producer, the dairyman of northern Illinois.

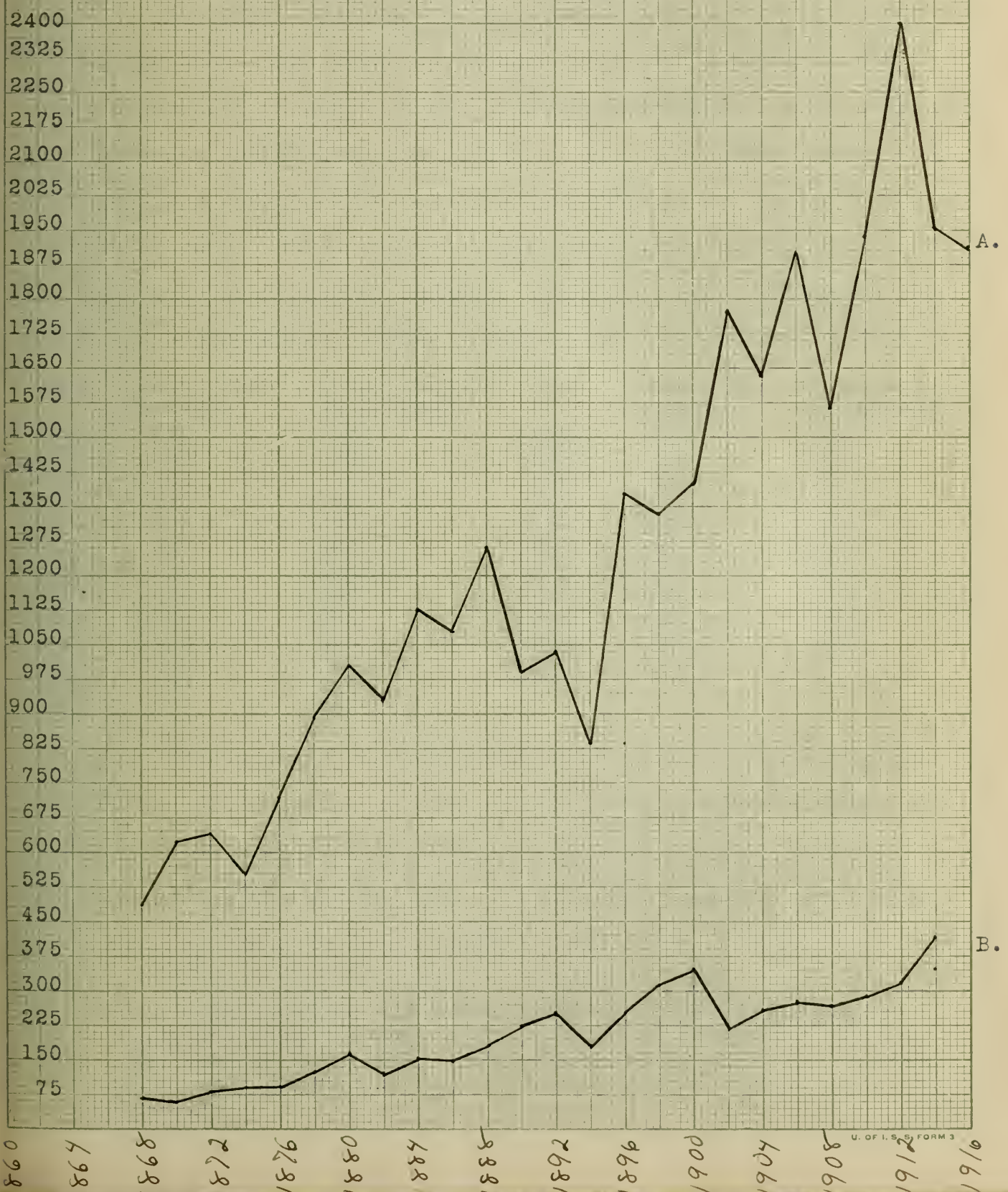
These conditions would at once discount to some degree the criticisms made relative to the early practices of the railroads and warehousemen. The practices of giving short weights, issuing fraudulent receipts, dishonest grading, and forming "corners" and "rings" undoubtedly existed prior to 1871 and for some time after

1. The following resolution offered in the constitutional convention of 1870 would indicate the scarcity of manufactures in the State: "Resolved, That for the encouragement of the establishment of manufactures in this State, there ought to be a clause in the new constitution exempting all manufacturing companies from taxation by all laws of this State, for the term of five years after the adoption of said constitution---." Debates of Constitutional Convention, 1870, p. 100.

2. "The great evil under which the 'producing class' of this State labor, is the want of competition in the business of warehousing the produce of the State." Ibid., p. 1629.

3. "The present system of grain inspection was the outgrowth of an incomprehensible antagonism developed some years ago among the

I
 A. Total production of wheat, corn, and oats in the States of Illinois, Indiana, Wisconsin, Minnesota, Iowa, and North and South Dakota.
 B. Total receipts of grain in Chicago in millions of bushels.
 (follow p. 55.)



that date. But to what extent these practices affected the grain trade of the city of Chicago or to what extent the elimination of such practices has been due to State regulation or the efforts of the Chicago Board of Trade is impossible to determine. Undoubtedly both agencies are responsible for improvement in the conditions.

The grain business of the city of Chicago has increased during the last sixty years both absolutely and relative to the total production of grain in the territory tributary to the city. The following table¹ shows the growth in the total grain receipts in the city from 1862 to 1914 and also the increase in the total production of wheat, corn, and oats, the three most important cereals of the States of Illinois, Indiana, Wisconsin, Iowa, Minnesota, and North and South Dakota, States tributary to Chicago: (in millions Bu.)

Year,	Total Pro- duction,	Total Receipts in Chicago,	Year,	Total Pro- duction,	Total Receipt in Chicago,
1868	493	69	1894	838	187
1870	623	60	1896	1382	253
1872	641	88	1898	1335	320
1874	555	95	1900	1402	349
1876	705	97	1902	1774	218
1878	897	134	1904	1633	265
1880	1013	165	1906	1897	280
1882	934	126	1908	1570	272
1884	1130	159	1910	1943	294
1886	1083	151	1912	2404	322
1888	1265	182	1914	1953	416
1890	987	227			
1892	1046	255			

The increase in production is from 493 millions bushels in 1868 to 1953 millions in 1914. The total receipts of grain in the city of Chicago were in 1854, 15 millions bushels, in 1868, 69 millions bushels and in 1914, 416 millions bushels. This shows a six-fold increase in total receipts since 1868, and also a slight

Grangers as to Chicago business." Chicago Tribune, 1877, March 7.

1. Table compiled from the Annual Reports of the Secretary of Agriculture and from the Year Books of the Department of Agriculture. The amount, 838, under total production for 1894, includes oat crop of 1895 instead of 1894 as the figures for the latter are not available.

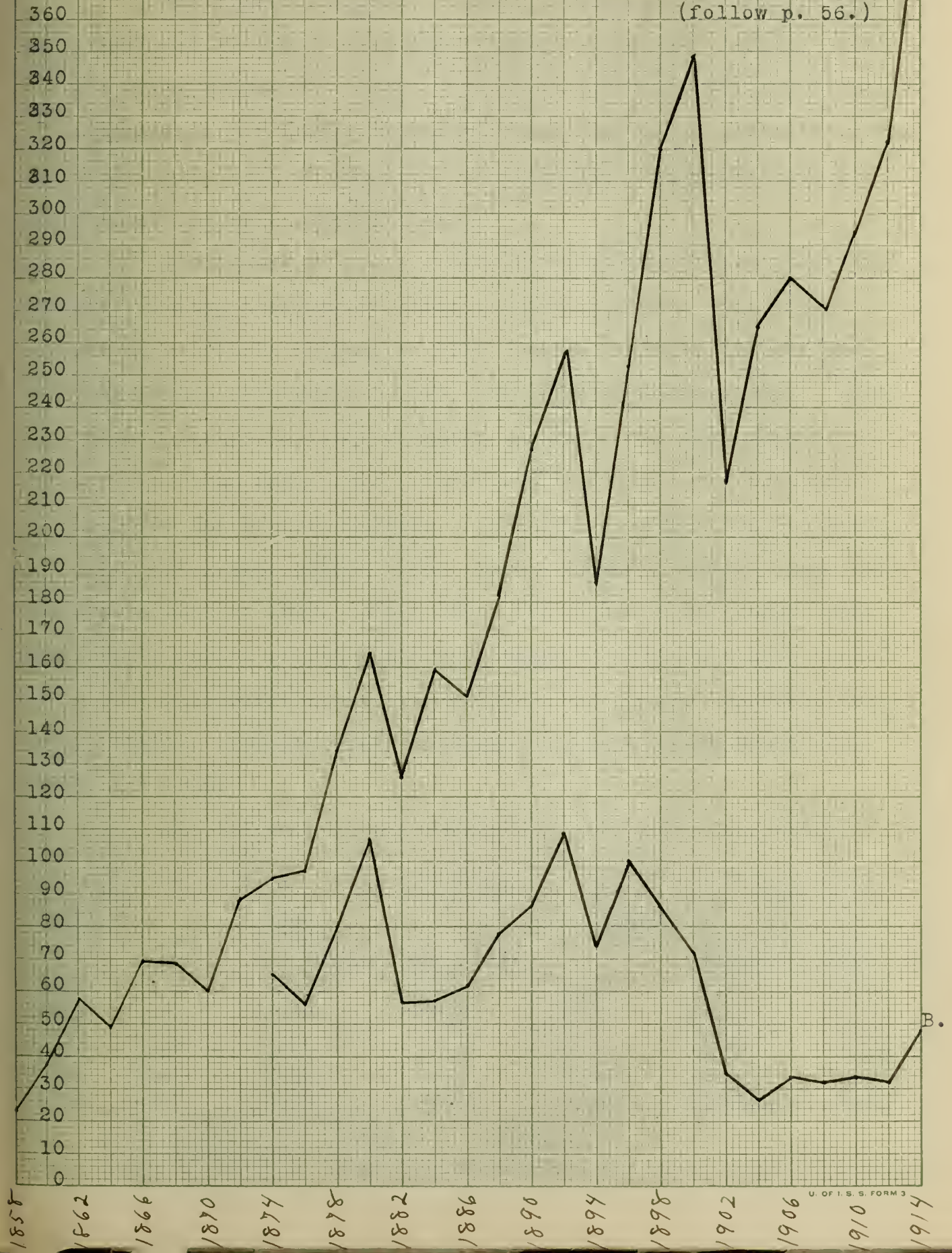
This graph represents inpercentages the proportion of the total receipts of grain in Chicago to the total production of wheat, corn, and oats produced in the States of Illinois, Indiana, Wisconsin, Minnesota, Iowa, and North and South Dakota. The production for each year being taken as one percent.

(follow p. 56.)



A. Total receipts of grain in Chicago in millions of bushels for ^{III} alternate years.
 B. Grain received into public store in Chicago.

(follow p. 56.)



increase in Chicago receipts relative to the total production of the three most important cereals in the seven States named.¹

The growth of grain business in the city of Chicago can be attributed in only a very small degree, if at all, to the merits of the State inspection system. The most important factors apparently responsible for such increase are the location of the city in the greatest grain belt of the world and the city's accessibility to both water and rail transportation.¹

The amount of grain stored in warehouses, both public and private, during this period shows no such increase. The total amount so stored in Chicago in 1872, was 69 millions bushels and and the amount so stored in 1914, was 162 millions bushels.² This decrease relative to total receipts is due to the fact that an increasingly large amount was transferred "on track" and "billed-through" to the Eastern markets. The graph representing the amount of grain going into public store shows a slightly upward curve for the years 1870 to 1896. After 1896, the curve is decidedly downward for a period of ten years when there is again a slight rise.³

Unlicensed elevators, which do not become important until 1890, rapidly increase their holdings of grain in the years 1897, 1898, and 1899.⁴

The decrease in the amount of grain going into public

1. Average rates in cents per bushel of corn and wheat, Chicago to New York; Year Book of the Department of Agriculture, 1902, p.851.

Year	Corn			Wheat		
	All Rail,	By Lake and Canal,	By Lake and Rail,	All Rail,	Lake and Canal,	Lake and Rail,
1875	19.5	8.75	11.34	20.89	9.82	12.09
1880	17.48	13.41	14.43	19.8	13.13	15.8
1885	12.32	6.3	8.01	13.2	6.54	9.02
1890	11.36	5.93	7.32	14.3	6.76	8.52
1895	10.29	4.54	6.4	11.89	4.86	6.96
1900	9.19	4.07	4.72	9.96	4.49	5.1

2. Vide Statistical Table following Page, 58.

3. Vide Graph opposite Page, 56, Graph III.

4. Vide Statistical Table following Page, 58.

A. Grain inspected from private elevators in Chicago in millions of bushels for alternate years.
B. Grain inspected on "track."

(follow p. 57.)



storage and the increased importance of private warehouses cannot be attributed to defects in the State Inspection System since both public and private elevators, in order to be "regular" on Exchange, have for over fifty years been subjected to the Chicago Board of Trade regulations which in every particular have been as exacting as the State's regulations and in addition have controlled many phases of the business not supervised by the State.¹

One of the apparent reasons for the increased importance of private over public warehouses is the decision made in the Central Elevator cases enjoining the owners of public warehouses from mixing their own grain with that of their patrons. A considerable number of licenses were voluntarily surrendered and many grain dealers have also become private warehousemen.

Whatever the merits or defects of the State System of grain inspection and supervision over public elevators, a minimum standard was set. The law has not enjoined the Chicago Board of Trade from subjecting warehousemen to more exacting requirements relative to inspection and weighing of grain than the requirements laid down by law or imposed by the Railroad and Warehouse Commissioners prior to 1914. The law likewise does not compel the Board of Trade to accept the receipts issued by the public warehousemen and stamped by the State registrar.² If the State's standard is not sufficiently high, the Board has it within its power to raise it for all warehousemen whose receipts are passed on the Exchange floor.

These conditions, however, do not necessarily mean adequate protection for the shipper and producer of grain nor for the

1. These regulations are printed in detail in every report of the Chicago Board of Trade.

2. In Minneapolis, where there is State inspection, grain is sold as graded by the Board of Trade inspectors and graders of grain. Since 1904, the Chicago Board of Trade has conducted a resampling department. Vide, *Supra* p. 34.

The Grain Business of Chicago in Millions of Bushels

for Alternate Years:

Year,	A.	B.	C.	D.	E.	F.	G.	H.
1854	15	13						
1856	24	21						
1858	23	20						
1860	37	31						
1862	57	56						
1864	49	46						
1866	68	65						
1868	69	63						
1870	60	54						
1872	88	83			69	69		
1874	95	84	65		66	66		
1876	97	87	56	53	61	53		8
1878	134	118	80	77	107	77		70
1880	165	154	107	104	138	104		34
1882	126	114	57	64	99	64		35
1884	159	138	57	59	128	58		70
1886	151	129	62	61	131	61		70
1888	182	156	78	73	147	72		75
1890	227	204	86	85	204	85		119
1892	255	216	109	99	246	107	8	139
1894	187	148	73	68	181	71	3	110
1896	253	219	100	92	264	120	28	144
1898	320	287	86	99	299	166	67	133
1900	349	265	72	69	291	170	101	121
1902	218	166	35	41	172	115	74	57
1904	265	180	27	22	199	121	99	22
1906	280	214	34	33	257	150	117	107
1908	272	222	32	37	229	139	102	90
1910	294	214	35	29	254	134	105	120
1912	322	244	32	40	255	145	105	110
1914	416	316	49	53	259	162	109	97
1915	371	299	52	53	348	243	190	105

A. Represents Total Chicago Receipts of all Grain.

B. " " " " " " Shipments of all Grain.

C. " " Grain Received into Public Store.

D. " " Grain Shipped from Public Store.

E. " " Grain Inspected on Arrival.

F. " " Grain from Store, Public and Private, Inspected.

G. " " Grain from unlicensed Elevators, Inspected.

H. " " Grain Inspected on "Track".

Columns A, and B, are compiled from the Chicago Board of Trade Reports, 1871, pp. 36-37; 1891, pp. 18,19; 1915, pp. 18, 19.

Columns C, and D, are taken from the Annual Reports of the Illinois State Grain Inspection Department, 1914-15, pp. 265ff.

Columns E, and F, are compiled from the Railroad and Warehouse Commissioners' Reports, through the year 1907, and from the Reports of the Illinois Grain Inspection Department through 1915, Reports 1914-15;

Column G, is obtained by subtracting column D from F.

Column H, is obtained by subtracting column E from F.

distant purchaser, who buys the grain, not by sample, but by grade. The failure of the State to make adequate provision for the weighing of grain, going into store, leaves the shipper dependant upon the warehouseman or board of trade in this important particular. Further if the inspection system is faulty, the shipper has no legal guarantee that his grain will be honestly graded nor can the distant purchaser be certain that a reported grade will be up to the standard. Dishonesty or ignorance in the grading of grain will particularly injure the foreign market for grain and hence unfavorably affect the price of the same.

If the history of mercantile regulation by law proves one thing it proves that the law in most instances is no stronger than the special agencies created to look after its enforcement. Without such agencies the law is soon a dead letter even if temporarily obeyed and with faulty agencies or agencies burdened with too many duties the law is not effectually enforced. In the regulation of many mercantile businesses and in the warehousing business in particular, another conclusion may be drawn and that is that the State agency must co-operate with the mercantile interests, in this case the boards of trade.

The Railroad and Warehouse Commissioners have undoubtedly been burdened with too many functions to leave them time to establish a more perfect system of inspecting and grading grain. During its early history it failed to co-operate with the Chicago Board of Trade in establishing grades of grain and at times inspectors have been appointed because of political affiliations and not because of their qualifications as grain judging experts.

It is a question whether Section 6, of the article on warehousing, as reported by the "committee on the whole" to the

Total production of grain in the United States in millions of bushels for alternate years. (follow p. 60.)

V

4700
4600
4500
4400
4300
4200
4100
4000
3900
3800
3700
3600
3500
3400
3300
3200
3100
3000
2900
2800
2700
2600
2500
2400
2300
2200
2100
2000
1900
1800
1700
1600
1500
1400
1300
1200
1100
1000

This graph is based on figures taken from the Statistical Abstracts of the United States: 1908, pp. 125 et seq., 1914, pp. 125 et seq.

1866
1870
1874
1878
1882
1886
1890
1894
1898
1902
1906
1910
1914

constituent assembly, in 1870, ought not to have been retained.

It provided: "The board of trade or other commercial organization of any town or city, to be designated by law, shall have the power to make such rules in regard to the inspection of grain as may be just and proper, for the protection of producers, shippers, and receivers of grain."¹

1. Debates in the Constitutional Convention, 1870, p. 1622, Supra, 11

CHAPTER II

Pure Food and Drug Legislation.

1. Practice of Adulteration in The Past. The manufacture and sale of impure and adulterated foods and drugs is not peculiar to the present age. The practice was carried on by the Greeks and Romans and became common during the middle ages and the early period of modern times.¹ Even "in primitive society knavish tricks, ignorant bartering, substitutions of bad for good, and falseness and meanness of all kinds,--" were practices of the day.²

During the middle ages in Europe the bakers, brewers, "pepperers" and vintners were the most common offenders.³ The production of imitation butter was common at a very early period; Paris passing an ordinance in 1396, forbidding "the coloring of butter with 'saucy flowers,' other flowers, herbs, or drugs."⁴ Old butter likewise was not to be mixed with new, but the sale was to be separate, under penalty of confiscation and fine. In very early times a "police des Commissaires" was established in France that had general supervision of provisions, as to purity and quality. Various statutes were also enacted from time to time.⁵

The histories of England and Germany likewise record practices of adulteration of foods and drinks.

The punishments meted out to these offenders, if caught, were of a character consistent with the customs of the times.

1. Quoting from the Black-letter Tract--"And you, maister brewer, that growe to be worth forty thousand pounds by selling of soden water, what subtilty have you in making your beere to spare the malt, and put in the more of the hoppe, to make your drinke, be barley never so cheape, not a whit the stronger, and yet never sell a whit the more measure for money--" Blyth, Foods: Their Composition and Analysis, p. 7.

2. Ibid., p. 3.

3. Pure Products, 1905, pp. 54ff. (Magazine)

4. Blyth, Foods: Their Composition and Analysis, p. 11.

5. American Food Journal, 1915, p. 572.

Offenders were taken about the town in the cart in which the refuse of the place had been collected, and to this degradation was often added corporal punishment. The pillory and other forms of cruel treatment were also resorted to.¹

Not only the manufacturer or producer of the corrupt article but also the retailer was early held responsible.²

-
1. Blyth, Foods: Their Composition and Analysis, p. 7.
 2. "Last to you, Tom Tapster, that take your small cannes of beere, if you see your guests begin to be drunke, halfe smal and halfe stronge-----" Ibid.

2. Causes of Increase in Adulteration. Although there was much adulteration in early periods, its large scale practice was dependent upon the development of commerce and modern inventions in the manufacture, preservation, and storage of foodstuffs. As long as the bulk of vegetables and fruits came from the family garden and orchard, the dairy products from the family cow, and the meats from the stock raised and slaughtered by the consumer, the adulteration of foodstuffs could not assume important proportions. Hence the first condition requisite for the large-scale manufacture and sale of adulterated and impure foods is the concentration of a large population into centers where such population is largely dependent upon the market for their food supplies. This condition alone, however, does not necessarily lead to the adulteration of foods. Large cities have existed from the earliest times of which we have historic records.

The other conditions requisite for the large scale practice of food adulteration were the inventions of new kinds of foods, new methods of preserving and canning foods, and the discovery of substitutes for and imitations of old kinds of foods. These conditions, together with the improved means of transportation, resulting in the territorial distribution of labor, concentration of population into large cities, and a relative increase in the prices of foodstuffs have been conducive to the manufacture and sale of impure and adulterated foods on a scale unimagined half a century ago.¹

The salmon canned on the Pacific coast, the oysters from the Atlantic, the fruit canned in the State of California or dried in the hot sun and arid atmosphere of New Mexico and Arizona are sold to the consumer in every city and hamlet of the United States

1. Probably no one factor is more responsible for adulteration on the large scale than the relative high cost of foodstuffs.

and in many other parts of the world. These products are sold in such a form that there can be no inspection as to purity or quality from the time that they leave the packer in these distant lands until the packages are broken by the consumer in his home. The same conditions prevail in the manufacture and sale of preserved meats and dairy products.

The discovery and use of new kinds of preservatives of doubtful purity and wholesomeness is one of the most potent causes for the existence of impure foods.¹ The science of bacteriology has contributed the germ theory and the science of chemistry has discovered these new preservatives. Manufacturers of perishable foodstuffs are utilizing these two sciences, in too many cases ignorant of the effects of the chemicals they use upon the health of the consumer, or in utter disregard of the consumer they change perishable foodstuffs into well-nigh non-perishable products.

With the progress of the sciences, imitations of old kinds of foods and substitutes for the same, which are difficult to detect, have been placed upon the market. Many of these products have been proven to be of lower food value than the genuine and in many cases to be positively injurious to the human system. Chicory is sold for coffee, oleomargarine for butter, and glucose products for maple syrups.

The pure food problem is thus a two-fold problem: what are impure foods and how can the manufacture and sale of the same be prevented. The former is a problem for the chemist, the latter for the legislatures and courts.

1. Folin, Preservatives in Foods, p. 14.

3. Pure Food Legislation and The Police Power. The power of the State to regulate the manufacture and sale of foods and drugs is a valid exercise of its police power. The maxim, "Salus populi suprema lex" has come down to us from the Romans. In *Beer Co. v. Mass.*, the Supreme Court of the United States expressed the following opinion: "Whatever differences of opinion may exist as to the extent and boundaries of the police power, and however difficult it may be to render a satisfactory definition of it, there seems to be no doubt that it does extend to the protection of the lives, health, and property of the citizens, and to preservation of good order and the public morals. The legislature cannot, by any contract, divest itself of the power to provide for these objects. They belong emphatically to that class of objects which demand the application of the maxim, 'Salus populi suprema lex'."¹ In an opinion of the Illinois Supreme Court is found the following: "The police power of the State is that inherent and plenary power in the State which enables it to prohibit all things hurtful to the comfort, safety, and welfare of society---."² In another case the court held that "the police power endeavors to prevent evil by checking the tendency toward it, and it seeks to place a margin of safety between that which is permitted and that which is sure to lead to injury or loss." It is apparent from these opinions that the police power is sufficiently broad to admit of food and drug regulation.

This power may be exercised by the State even though it interferes with the liberty and property rights of individuals or corporations. In *Mugler v. Kansas* the United States Supreme Court held that the constitutional limitations which declare that no person shall be deprived of his property of liberty without due proc-

1. 97 U.S. 25.

2. 70 Ill. 191.

ess of law are not incompatible with the principles equally vital because essential to the peace and safety, that all property in this country is held under the implied obligation that the owner's use of it shall not be injurious to the community.¹

The Illinois Supreme Court in Hawthorn v. People, held: "Where a law is necessary for the safety, security, and welfare of society, the fact that it regulates trade or any business, or to some degree operates as a restraint thereon, does not render it unconstitutional."²

The police power, although very broad, is not without its limitations. The Supreme Court of the United States has stated its boundaries as follows: "Neither the legislature nor a municipality can, under the guise of police regulation, arbitrarily invade personal or property rights; and when such regulations are called in question the test should be whether they have some relation to the public health or public safety, and whether such is in fact the end sought to be attained. If not, they should be declared invalid--."³

The police power of the State must also be exercised at all times in subordination to the Federal Constitution.⁴ The Illinois Supreme Court held: "Under pretense of making police regulations, the legislature cannot enact laws unnecessary to the preservation of the health and safety of the community, or which prohibit that which is harmless in itself, or command that to be done which does not tend to promote the health, safety, and welfare of society."⁵

Until a few decades ago the police power as exercised in the regulation of the manufacture and sale of foods and drugs was

1. 123 U.S.623. 2. 109 Ill. 302.

3. 199 U.S.306. (1903).

4. 173 U.S. 684.

5. 67 Ill. 37, (1873).

a matter of common law, the guiding principles being found in the decisions of courts. During the last few decades, however, many States have through their legislatures enacted the common law rules into statutes. Unwholesomeness was a necessary element of the offense at common law, and it has been held a necessary element of the offense forbidden by statute.

4. Pure Food Regulation in Illinois Prior to 1899. Although adulterated and poisonous foods and drinks have been produced and sold since the earliest historic times, the pure food problem as we have it today, dates back only a little over half a century. With the growth of cities, the relative increase in the prices of foodstuffs, and the advancement in chemical science adulteration have increased. But at the same time that the science of chemistry came to the aid of the manufacturer of these impure products chemistry and bacteriology both came to the aid of the consumer. Food products were analyzed and their nutritive values determined. The effects of poisons and preservatives of various kinds upon the human system were also studied. Hygiene began to be taught in the public schools and newspapers, magazines, and lecturers aided in directing the attention of the people to the subject of pure foods. Another important factor, if not the most important, active in securing the suppression of the manufacture and sale of adulterated products and cheap imitations has been the honest producer of the genuine product. The most striking example of this factor in the State of Illinois has for many years been the producer of dairy products.

Prior to 1899, the State of Illinois had very few laws effectively regulating foods and drugs. The laws that were on the statute books in regard to food regulation were vague and unweildy. The legislature had made no provision for their enforcement and "what was everybody's business was nobody's business."¹ Systematic inspection and enforcement of law prevailed in only a few fields, primarily in the production and sale of dairy products and their substitutes. The principle of "caveat emptor" remained in

1. Illinois Food Commissioner's Report, 1899, p. 13.

force long after it had become practically impossible for either the middlemen to inspect much of the food that they were handling or for the consumer to inspect the food which he purchased until it was placed on his table.

The statutes of 1860, contain a law prohibiting a person from knowingly selling any flesh of any diseased animal, or other unwholesome provisions, or any pernicious or adulterated drink or liquor.¹ The weakness of such a statute is apparent and it is a question whether it strengthened the common law or weakened it.

Two laws, more specific in their application, were enacted a few years later. One forbade the manufacture and sale of poisonous candies and the other had for its object the regulation of milk supplied to cheese factories.² According to the latter law it was made a punishable offense for any one knowingly to supply or bring to be manufactured to any cheese factory in the State any tainted or adulterated milk or milk from which cream had been taken.

The Supreme Court of the State, five years later, construed this act as not applying to a person engaged in making butter or cheese on his own account but only to such factories as were conducted upon a joint or co-operative plan.³ The Court stated that the words "supply to be manufactured" or "bring to be manufactured," as used in the act, could not be construed to mean a sale. The

1. Illinois Statutes, 1860, p. 397. Opposition to sumptuary legislation was more openly manifested fifty years ago than at present. The following resolution was made by the committee on the bill of rights to the constitutional convention: "The maintenance inviolate of the right of every person in this State to select and enjoy whatever, of food or drink, he may deem most conducive to his health and comfort, is essential to the full and just enjoyment by every citizen of his natural birthright of life, liberty, and the pursuit of happiness; and the same shall never be denied or abridged in this State by law." Debates in Constitutional Convention, 1870, p. 260.

2. Public Session Laws, 1869, p. 113; Ibid., pp. 163ff.

3. Phillips v. Meade, 75 Ill. 334.

Court further stated: "Where various persons are interested in the factory, and each furnishing a quantity of milk to be manufactured, and to share in the products in proportion to the milk furnished, ---there is manifest justice in the provision which prevents one from imposing on the others by furnishing or supplying to be manufactured a diluted article.

"While the necessity for a law for this purpose is apparent, it is difficult to perceive any need for legislation to secure a party, who might be manufacturing on his own account, against imposition." The last statement is significant. The Court could see no necessity for legislation to protect the manufacturer producing on his own account. The principle "caveat emptor" must prevail. Further the Court did not take into consideration the consumer who might purchase the inferior article produced from the diluted or tainted milk.

The adulteration of milk and the manufacture of skimmed cheese were subjects early discussed by the dairy interests of the State. Both practices were considered detrimental to the dairy business.¹ Skimmed cheese was said to be sold for full cream cheese and consequently was destroying the market for the Illinois products. It was also contended that good butter and good cheese could not be made from unclean milk.² Adulterations of butter and cheese by the substitution of lard and tallow, were alleged to be common practices. It was thought high time that every dairyman throughout the great Northwest should join hands in suppressing these great frauds which were certain to sap the foundations of every dairyman's industry. Petitions were at various times sent to the legislature, requesting the passage of laws that would re-

1. Proceedings of The Illinois Dairyman's Association, 1875, p. 33; 1876, p. 11; 1877, p. 34; 1878, p. 45.
 2. Ibid., 1879, p. 53; 1880, p. 8.

quire all manufacturers to brand all cheese made, so as to indicate whether skimmed, partly skimmed, or full cream. The existing laws were not effective.

As a result of continued agitation, the legislature in 1879, passed two laws for the benefit of the dairy interests and the consumers of dairy products. The one was for the purpose of regulating the sale of milk and the other for the prevention of fraud in the manufacture and sale of butter and cheese. The act, regulating the sale of milk and providing penalties for the adulteration of the same, was a fairly comprehensive act and if proper provisions had been made for its enforcement it would undoubtedly have been adequate for that time.¹ The adulteration of milk and the sale of the same, either directly to the consumer or to any cheese or milk factory, were made punishable acts. Any milk from a diseased cow or milk diluted with water or any other foreign substance or milk from which cream had been taken were declared adulterated. Milk from cows fed on distillery waste was also declared impure.

The act for the prevention of fraud in the manufacture and sale of butter and cheese was in part as follows: "That whoever manufactures or sells -----any substance purporting to be butter or cheese, or having the semblance of butter or cheese, which substance is not made wholly from pure cream or pure milk, unless the same be manufactured under its appropriate name, and unless each package, roll or parcel of such substance,-----having distinctly----- marked thereon the true --- name of such substance, ----shall be punished as provided in this act."

The above law was not adequate as it did not forbid the manufacture and sale of products made in imitation of dairy products provided that such products were properly labeled substitutes.

1. Public Session Laws of Illinois, 1879, pp. 111ff.

This defect, which was apparently soon discovered, was remedied by the following legislature. A law was passed which made illegal the manufacture and sale of products in imitation of butter and cheese irrespective of whether such products were so labeled or not.¹

Another act was passed by the same legislature for the purpose of preventing the adulteration of other articles of food, drink, or medicine and the sale of the same when adulterated. According to this act the mixing, coloring, staining or powdering of any article of food with any ingredient rendering the article injurious to health or depreciating its value was prohibited. The sale of such articles was likewise prohibited. The manufacture and sale of articles of food colored, stained or powdered whether injurious to health or not was also prohibited unless such products were properly labeled, or the purchasers were fully informed by the seller of the true name and ingredients of such article.²

This act contained several weaknesses. Section Three permitted the manufacture and sale of adulterated foods and drugs not injurious to health provided such articles were properly labeled, and Section Six excused the maker and seller of the adulterated product provided that he could prove to the satisfaction of the court that he was ignorant of violating the provisions of the act and

1. "Section 1.--That whoever manufactures out of any oleaginous substances, or any compound of the same other than that produced from unadulterated milk, or cream from the same, any article designed to take the place of butter or cheese produced from pure, unadulterated milk, or cream of the same, and shall sell, or offer for sale, the same as butter or cheese, or give to any person the same as an article of food, as butter or cheese, shall, on conviction thereof, be fined not less than twenty-five dollars nor more than two-hundred dollars." Laws of Illinois, 1881, pp. 74ff.

In 1877, the coloring of grain by means of fumigation or any other chemical or coloring process, whereby defects in the grain might be concealed or its quality affected was prohibited.

2. Laws of Illinois, 1881, pp. 75ff. According to this act it was permitted to use harmless coloring substances in butter and cheese without so labeling it.

that he could not, with reasonable diligence, have obtained such knowledge. There were at this time no standards of purity and quality for food articles; much less was it known what adulterants made foods injurious to health. Hence in order to convict an offender it was necessary to establish that the adulterated article in question was injurious to health and that the offender was aware that he was violating the law.

Such an act could at best but remedy the most flagrant abuses. It was not a revision of the former acts and did not repeal them except by implication.¹

In spite of all the preceding laws the adulteration of foods and drugs continued to increase. One reason was the coming upon the market of canned goods and another reason the discovery of new adulterations. It was claimed that flour was adulterated with alum, carbonate of soda, hydrated sulphate of lime, bone dust, terra alba, and chalk. Glucose was sold for sugar products and chicory for coffee.²

The State Board of Health complains of the food conditions of the State. "Tainted and disease-marked meats, immature or decayed vegetables, pernicious or adulterated groceries and condiments, and bad things made worse by bad cooking, are spread upon our tables----. Cupidity, fearing loss, conceals as best it can the damaged and tainted character of the meats and fruits it offers

1. An article which has been much adulterated for many years is cider vinegar. The adulteration and the sale of the impure article was made illegal by an act of 1883. "Section 1. --- That every person who shall manufacture for sale, or shall offer----for sale, as cider vinegar, any vinegar not the legitimate product of pure apple juice, known as apple cider, and not made exclusively of said apple cider, shall, for each offense, be punished-----.

"Section 2. Every person who shall manufacture for sale, or who shall offer or expose for sale, any vinegar found upon test to contain any preparation of lead, copper, sulphuric acid, or other ingredients ----shall be punished----." Laws of Illinois, 1883, p.176.

2. Proceedings of Ill. State Dairymen's Asso. 1885, pp. 38ff.

for sale, or tempts the poor, by a cheaper price, to buy and use its unwholesome viands.

"Adulteration comes to add its deceits and dangers, and the poor denizens of the city homes are beset with dangers in almost every dish which appears upon our tables."¹

The above is undoubtedly an exaggerated statement of food conditions; but according to reports from various sources, the distribution of adulterated and tainted foodstuffs was a common practice.²

The rapid increase in the manufacture and sale of canned and preserved vegetables, fruits, and meat and fish products called for legislation regulating the industries producing such products. The following table shows the rapid increase in the production of canned and preserved products during the last forty years:

"Combined data for 'canning and preserving, fruits and vegetables,' and 'pickles and sauces' for the censuses from 1869 to 1909" Table No. 20, Thirteenth Census of the U.S. 1910, Vol.8, p.382

Year,	Cost of Material: In Millions Dollars.							Value of Product:				Value added by M'F'G.
1869,	-	-	-	3	-	-	-	6	-	-	-	2
1879,	-	-	-	13	-	-	-	20	-	-	-	6
1889,	-	-	-	23	-	-	-	39	-	-	-	15
1899,	-	-	-	51	-	-	-	79	-	-	-	28
1904,	-	-	-	68	-	-	-	107	-	-	-	39
1909,	-	-	-	84	-	-	-	128	-	-	-	44

Value of Canned and Preserved Fish and Oyster Products: Ibid., p.378												
1889	-	-	-	6	-	-	-	10	-	-	-	3
1899	-	-	-	12	-	-	-	19	-	-	-	7
1904	-	-	-	14	-	-	-	22	-	-	-	7
1909	-	-	-	17	-	-	-	28	-	-	-	10

The following Table gives in a general way the development of the meat packing industries: Ibid., p. 380.

1869,	-	-	-	61	-	-	-	75	-	-	-	14
1879,	-	-	-	267	-	-	-	303	-	-	-	35
1889,	-	-	-	482	-	-	-	564	-	-	-	81
1899,	-	-	-	685	-	-	-	788	-	-	-	103
1904,	-	-	-	811	-	-	-	922	-	-	-	110
1909,	-	-	-	1202	-	-	-	1370	-	-	-	167.

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1. State Board of Health, 4th Annual Report, 1882, p. Intro. 12.
 2. Illinois State Food Commissioner's Report, 1899-00, p. 80.

The demand for legislation protecting the consumer of these canned and preserved products increased with the growth in output of these products. Unscrupulous manufacturers used raw material unfit for human food, artificially colored and flavored it and then distributed it in hermetically sealed cans. No one but an expert analyst could detect the impurities contained therein.

In 1885, an act was passed which had for its object the protection of the consumer from fraud and deception in relation to canned and preserved foodstuffs. The act was carefully drawn up and went one step farther than the preceding pure-food laws had gone. It charged any board of health in the State cognizant of any violations of the act to prosecute the offender.¹ It was however not to be expected that the boards of health could prosecute except in case of the most flagrant violations for the legislature had again failed to provide food-standards and the plaintiff, as heretofore, had the burden of proving that the food involved in each particular case was detrimental to health or dangerous to life.

The oleomargarine law of the State remained a dead letter

1. "An act to protect the public from imposition in relation to canned and preserved food.

"Section 1. --- That it shall hereafter be unlawful in this State for any packer or dealer in preserved or canned fruits or vegetables or other articles of food to offer such canned articles for sale---, with the exception of goods brought from foreign countries, or packed prior to the passage of this act, unless such articles bear a mark to indicate the grade or quality together with the name and address of such firm, person, or corporation that pack the same or dealer who sells the same,-----.

"Section 2. That all soaked goods put up from products dried before canning, shall be plainly marked on the face of the label,--- with the word "Soaked."

"Section 3. Any person or corporation, who shall falsely stamp or label such cans----or knowingly permit such false stamping or labeling, ----shall be---punished, -----and it shall be the duty of any board of health in this State cognizant of any violations of this act to prosecute any person,----or corporation, which it has reason to believe has violated any of the provisions of this act,--"

Laws of Illinois, 1885, pp. 207ff.

and the manufacture and sale of butter substitutes continued to be of great concern to the dairying interests of the State. The ineffectiveness of the Illinois law was primarily due to the fact that the legislature had again failed to provide special agencies charged with its enforcement. But conditions in any one State could not be remedied by the laws of that State alone however carefully enforced. Butter has a country-wide if not world market and therefore the sale of butter substitutes as genuine butter in any one or more of the States of the Union affected the price of butter unfavorably throughout the entire country. The States likewise had no control over interstate traffic in the product. A national law was necessary.

At various times the State Boards of Agriculture petitioned Congress for such a law. Government inspectors were also asked for.¹ Congress finally passed a law in 1886, placing a special tax upon the manufacturer and also upon the dealer in butter substitutes. A tax was also placed upon the oleomargarine produced in this country or imported from foreign countries.²

This act was hailed with much enthusiasm by the dairying interests of the State. It was reported in the annual convention of the Illinois Dairymen's Association in 1887, that the price of butter as affected by the National Oleomargarine Law had been raised from nine to twenty-one cents per pound and that the production of oleomargarine had been decreased by seventy-five per cent. Data on the production of oleomargarine prior to the year 1887 are not available therefore it is impossible to determine the decrease in its production if there was a decrease; but according to prices quoted by the Elgin and New York markets there was no perceptible

1. Annual Report of Ill. State Dairymen's Association, 1886, p. 95.

2. The following is in substance the National Oleomargarine Law

change in prices of butter resulting from the enactment of the National law.¹ The National law did one thing, it assisted the States in their efforts to have butter substitutes sold under their true name.

The manufacture and sale of oleomargarine on which revenue was paid rapidly increased.² In 1888, revenue was paid on 32

of 1886.

Section 3. Special taxes are imposed as follows: Manufacturers shall pay \$600. Whole dealers in oleomargarine shall pay \$480. Every person who sells or offers for sale oleomargarine in the original manufacturers' packages is deemed a wholesale dealer. A manufacturer who has paid the \$600 tax may sell his own product in original packages to which the tax paid stamps are affixed without paying the \$480. Retail dealers in oleomargarine shall pay \$48. Every person who sells oleomargarine in less quantities than ten pounds at one time shall be regarded as a retail dealer in oleomargarine.

Section 8. Manufacturers shall pay a tax of two cents per pound upon oleomargarine which he manufactures and sells.

Section 10. All oleomargarine imported from foreign countries, shall in addition to any import duty imposed on the same, pay an internal revenue tax of fifteen cents per pound.

Section 16. Oleomargarine may be exported without paying the tax thereon. United States Statutes 1886, Chapter 840, pp. 209ff.

1. The following table gives the Elgin and New York butter prices for the years 1882-1915. (fractions omitted)

Year,	Elgin Prices,	N.Y. Prices,	Year,	Elgin Prices,	N.Y. Prices,	Year,	Elgin Prices,	N.Y. Prices
1882,	34	33	1894,	22	23	1906	24	25
1883,	30	26	1895,	21	21	1907	28	28
1884,	28	26	1896,	18	18	1908	27	27
1885,	26	23	1897,	18	19	1909	29	29
1886,	26	24	1898,	19	20	1910	30	30
1887,	26	24	1899,	21	21	1911	27	27
1888,	26	24	1900,	22	22	1912	30	31
1889,	23	24	1901,	21	22	1913	31	32
1890,	23	23	1902,	24	25	1914	29	30
1891,	25	26	1903,	23	23	1915	28	30
1892,	25	26	1904,	22	22			
1893,	26	27	1905,	24	25			

Elgin prices are compiled from the Elgin Dairy Reports.

New York prices are taken from "The Milk Reporter" Oct. 1917, p.16.

2. Oleomargarine: Production on which Internal-Revenue Tax was paid: (in millions of pounds)

Year,	Ill.	U.S.	Year,	Ill.	U.S.	Year,	Ill.	U.S.
1887,	10	21	1891,	30	43	1895,	31	53
1888,	17	32	1892,	30	47	1896,	28	47
1889,	17	33	1893,	39	65	1897,	24	42
1890,	20	30	1894,	40	66	1898,	20	55

millions pounds, 17 millions of which was produced in the State of Illinois. In 1894, 66 millions pounds paid revenue, 40 millions of which was produced in the State of Illinois. During the following three years the amount on which revenue was paid decreased greatly. The lowest point was reached in 1897, when revenue was paid on only 42 millions pounds. The decrease was apparently due to the exceedingly low price of butter. In 1916, revenue was paid on 150 millions pounds, 101 millions of which was produced in the State of Illinois.

The dairymen of the State made no open objection to the manufacture and sale of butter substitutes when sold under their true names but complaints continued to be made that substitutes were still sold under the name of butter.¹ Data on the illicit trade in the product are of course not available but that the quantity so sold was considerable is beyond question.

To more completely overcome the fraudulent sale of these substitutes a law was passed in 1897, regulating the manufacture and sale of every conceivable substitute for butter. Every article, substitute or compound, other than that which is made from pure milk or cream, made in the semblance of butter is declared an imitation butter. Coating, powdering or coloring, with any coloring matter whatever, any substance designed as a substitute

Table of Oleomargarine Production continued:

Year,	Ill.	U.S.	Year,	Ill.	U.S.	Year,	Ill.	U.S.
1899,	38	80	1905,	31	49	1911,	75	117
1900,	46	104	1906,	36	53	1912,	77	126
1901,	41	101	1907,	48	68	1913,	87	143
1902,	49	123	1908,	51	79	1914,	89	141
1903,	30	71	1909,	56	90	1915,	100	143
1904,	20	48	1910,	90	139	1916,	101	150

Compiled from the Statistical Abstracts of the U.S., 1895, p. 297; 1900, p. 36; 1906, p. 110; 1910, p. 218; 1914, p. 168; 1916, p. 212.

1. In 1885, the Ill. State Board of Agriculture received butterine for exhibition at the fat stock and dairy show. A flood of criticism followed. Annual Rept. of Ill. State Dairymen's Asso. 1887, p.90.

for butter is prohibited. The mixing of any animal fat or vegetable oil with butter or in any way combining fats so as to give them a yellow color in resemblance of butter is also prohibited. Imitation butter lawfully manufactured and sold, must be branded "Butterine", "substitute for Butter" or "Imitation Butter". Contracts made in violation of the act are declared null and void.¹

This act, though carefully worded and comprehensive, like most of the other food and drug acts of the State made little improvement since the legislature again failed to make any provisions for its enforcement. The anti-color clause was also considered unconstitutional on the grounds that it was special legislation.

Justices of Chicago dismissed cases brought up under the act.²

1. Laws of Illinois, 1897, pp. 3ff.

2. Illinois State Food Commissioner's Report, 1901, p. 2. The Act specifically permitted the coloring of butter made from milk or cream.

A standard of analysis for milk was fixed by the legislature of 1897: "The standard of analysis for milk as to ingredients:

"Water 88 per cent; milk solids 12 per cent; and such milk solids shall contain not less than 3 per cent of butter fat. When contracts are made for milk purchased within this State, for delivery within or without this State, no other standard shall be used except by special contract in writing." Laws of Illinois, 1897, p. 268.

In 1887, a law was passed prohibiting the killing of an immature calf less than four weeks old, for the purpose of sale. The sale of veal of such calf was also prohibited. Laws of Illinois 1887, p. 307.

The sale of lard substitutes, unless distinctly marked "Compound Lard" or "Lard Compound" was prohibited by an act passed by the legislature in 1889. Laws of Illinois, 1889, p. 111.

5. Regulation under The State Food Commissioner. In the absence of a National pure food law prohibiting the interstate traffic in impure and adulterated products together with effective pure food laws in several surrounding States, it was contended that Illinois furnished the dumping ground for the food refuse of a dozen States, particularly since the State with her great cities and large foreign population afforded an almost unlimited market for cheap foods.¹

The pure food laws of Illinois would have been adequate if they could have been enforced, but as there were no special agencies charged with their enforcement, they were generally disregarded. Consumers and honest producers continued to agitate for effective legislation. The enlightened consumer wanted an opportunity to secure pure and wholesome food and the honest producer longed to see unfair methods of competition suppressed.

Such legislation was finally enacted in the year 1899, for which no interests in the State probably deserve more credit than the producers of dairy products.² This law not only prohibits the manufacture and sale of impure and adulterated foods and drugs but also provides for special officers charged with the enforcement of the law. Its main provisions are in substance as follows: The governor by and with the advise of the Senate shall appoint a State Food Commissioner. Such commissioner shall appoint two assistants, one of whom shall be an expert in dairy products and the other shall be a practical and analytical chemist. The commissioner shall also appoint six inspectors. It shall be the duty of the commissioner to enforce all laws that now exist or are hereafter passed relative to the production, manufacture or sale of food products.

1. Illinois State Food Commissioner's Report, 1899-00, p. 80.

2. American Food Journal, May, 1907, p. 16; Illinois Dairymen's Association, 1890, p. 126.

It shall be the duty of the commissioner to inquire into the quality of dairy and other food products. He may lawfully secure samples and have them analyzed by the State chemist and shall furnish the prosecuting attorney with evidence against violators of the food laws. The commissioner or any of his assistants may enter any factory or store where foods are made, stored or sold and secure samples. He shall also examine and report on samples furnished by the State Board of Health. Annual reports shall be made to the governor.

No person shall, within this State, manufacture for sale or sell any article of food which is adulterated within the meaning of this act.¹

1. The following are in substance some of the more important provisions of the act of 1899:

The term "food" as used in this act shall include all articles used for food by man or animal.

An article shall be deemed adulterated within the meaning of this act:

First: If its quality, strength or purity has been affected as a result of mixing with any substances.

Second: If affected by substitution.

Third: If affected by subtraction.

Fourth: If it is any imitation falsely sold.

Fifth: If inferiority is concealed by mixing, coloring, etc.

Sixth: If it contains any added substances or ingredients which are poisonous or injurious to health.

Seventh: If it is wholly or partly decomposed, putrid, or is part of diseased animal.

Compounds and mixtures and imitations not injurious to health may be sold if properly and honestly labeled.

Section 20. Packed and canned goods must be free from substances deleterious to health. Such articles must bear a mark, stamp, brand or label bearing name and address of firm, person, or corporation that packs them, or of the dealer that sells the same. Bleached and soaked goods shall be branded "Bleached" or "Soaked".

Section 21. All imitation jams, fruits, and jellies shall be labeled "Imitation".

Section 22. Extracts of more than one principle must be so labeled.

Section 25. Any one manufacturing or selling food products shall furnish samples to the State analyst if so required but shall receive pay therefore.

Section 26. All acts inconsistent with this act are hereby repealed.

Laws of Illinois, 1899, pp. 372ff.

This law differs from all the preceding pure food laws of this State in that it provides for the office of State Food Commissioner charged with the enforcement of the food laws. The regulation by statute of the manufacture and sale of foods in Illinois may be said to commence with the enactment of this law.

In the absence of the law making provisions for the location of offices and laboratory, the commissioner located them in Chicago.¹ Six inspectors were appointed for the purpose of securing samples of food for analysis. A State analyst and an assistant commissioner were also appointed.²

The commissioner from the very beginning of his term, addressed various meetings of wholesale and retail grocers for the purpose of acquainting them with the law and securing their co-operation. The Retail Grocers' Association of Illinois, at their annual meeting at Rock Island in 1900, declared that they believed in the law and agreed to stand by it and uphold it. Wholesale associations likewise declared themselves in sympathy with the law.²

As a result of these various meetings, the manufacturers and dealers in food products submitted their labels and stamps for their food products for inspection and the commissioner's office changed and corrected over five hundred of them so as to conform to the laws and rulings of the department.³

Inspection was extensively carried on from the beginning and good results were obtained. In 1902, 924 samples were taken by the inspectors of which 527 were found pure and 397 or 43 per cent were found adulterated and blended. A number of these samples

1. Offices and laboratory were located on the sixteenth floor of the Manhattan Building. Illinois State Food Commissioner's Report, 1899-00, pp 2ff.

2. Ibid., pp. 4ff.

3. Ibid., p. 5; Ibid., 1902, p. 2.

were condemned under the old laws.¹ In the following year 1,446 samples were collected and analyzed by the State analyst. Of these 906 were found pure and 450, or 31 per cent, not in conformity with the law.² The Food Department at this time estimated that eighty per cent of the manufacturees in the State were making and putting on the market their food products in conformity with the State food laws. The other twenty per cent of the manufacturers were considered as opposing the laws; 4,595 inspections were made during the year. In 1904, 1,718 samples were analyzed of which 1,152 were found pure and 566, or 32 per cent, adulterated.³ In 1905, 2,402 samples were collected; 1,609 were found pure and 793, or 33per cent, not in conformity with the laws.⁴

These percentages of food samples not in conformity with the law and rulings of the Food Department would indicate no improvement in food conditions in the State. It is however to be questioned whether they can be taken as a criterion of existing conditions. Increased experience undoubtedly enabled the commissioner and his assistants to more readily detect the violator of the law and hence the samples gathered would not be a fair representation of the foods manufactured and sold in the State.

The anti-color clause of the law of 1897, which had caused the department much trouble because Circuit Judges of Cook county had declared the clause special legislation, was to a large degree remedied by the passage of the National law of 1902, which placed a tax of ten cents per pound upon colored oleomargarine and adulter-

1. "The old law provided for a penalty that might be recovered before a justice of the peace; suits were accordingly brought before a justice of the peace in the county where the offence was committed. Under the statutes of 1899 the case has to be brought by indictment and prosecution has to be in the Circuit or criminal court."

Illinois State Food Commissioner's Report, 1902, p. 2.

2. Ibid., 1903, p. 58.

3. Ibid., 1904, p. 58.

4. Ibid., 1905, p. 86.

ated butter and one-fourth of one cent per pound upon uncolored oleomargarine. This law also requires that these products be stamped and every package properly labeled. It also provides that if hotel men and boarding house keepers tint the oleomargarine, they too must pay the tax.¹

In the preceding year the illinois legislature had passed an act "to prevent fraud in the branding and sale of process and renovated butter". It was made a misdemeanor to manufacture, sell or expose for sale any process butter or renovated butter unless the same was branded or marked as such.²

The dairy interests were now well protected in their industry and likewise the consumer in the use of dairy products.³ Great improvement in the conditions of the food market in general is also reported at this time by the commissioner.⁴

There remained however many defects in the laws which had to be remedied in order to make them easy to enforce. One defect resulted from the fact that Section 6, of the act, "to prevent and punish the adulteration of articles of food, drink, and medicine and the sale thereof when adulterated" passed in 1881 and reading, "No person shall be convicted under any of the foregoing sections of this act if he shows to the satisfaction of the court or jury that he did not know that he was violating any of the provisions of this act and that he could not with reasonable diligence have obtained the knowledge," had not been repealed by the act of 1899. Bills were presented to mend this defect but they met cold recep-

1. United States Statutes, 1902, Part I, pp. 193 ff.

2. Laws of Illinois, 1901, pp. 315ff.

3. This does not mean that butter substitutes were no longer sold as genuine butter. Court records abundantly prove that the illicit trade in the products continued. But the illicit trade was unquestionably reduced to such proportions that neither the dairy interests nor the consumer were perceptibly menaced.

4. State Food Commissioner's Rept. 1902, p.3.

tions. This clause of the act of 1881 made it necessary for the government to prove that the defendant knowingly violated the act. This was generally difficult to do.

Another serious defect in the law was its failure to establish standards for foods or to provide a commission authorized to establish such standards. Consequently violators of the law set up the defense that "inasmuch as no standards were fixed by statute therefore they could not be held to any definite composition in their preparation of any article of food and that they might sell as pure any food not injurious to the public health, no matter how low in percentage its food constituent might be."¹ This defect was however remedied to some degree, as early as 1905, by the adoption, on the part of the State Food Department, of the food standards as fixed by the food chemists of the National Association of State Dairy and Food Departments. These standards were at this time recognized by the State Food Departments of the different States as authority and the National Association of Official Agricultural Chemists, of which Dr. H. W. Wiley, chief of the Bureau of Chemistry of Washington, D.C., was at this time chairman, had also substantially adopted these standards.²

Retail dealers claimed that there was another serious defect in the law of 1899. Under this law the retail dealers were held responsible for the foodstuffs which they sold. They claimed that it was unjust to prosecute them if they bought the goods in good faith, guaranteed to be according to law. The food commissioner, on the other hand, maintained that if the dealers were not held responsible in the first instance the result would be that their competitors would buy adulterated foodstuffs with a purity certifi-

1. State Food Commissioner's Report, 1903, p. 60.

2. Ibid., 1905, p. 95.

cate from irresponsible wholesalers and manufacturers in other States and the Illinois commissioner would then be helpless in protecting the honest retailers.¹ If this was a weakness in the law it could not be remedied by a change in the State laws alone as it involved interstate traffic.

It was early contended that uniformity in State food laws was necessary. Under existing conditions, prior to the enactment of the National law of 1906, the manufacturers of foodstuffs in Illinois, for example, had to prepare labels for their foods sold in Illinois that would probably not meet the requirements of the laws in other States. Special labels had to be prepared for each State in which their foods were sold, whereas if a uniform law and uniform rulings prevailed throughout the Nation then one form of label would answer for all the States, and the same would be true in the case of goods that were to be stamped, branded or placarded.

The lack in uniformity of food laws, probable injustice of holding retailers responsible in first instance, and interstate traffic in impure and adulterated foods and drugs were problems that could not be solved by the State legislatures alone.²

The need of a National law regulating the sale and manufacture of foods and drugs in the territories and the traffic in the same in interstate commerce became greater annually.³ Finally

1. Ill. State Food Commissioner's Report, 1899-00, p. 36.

2. In 1903, Congress had made an appropriation to the Department of Agriculture for the purpose of enabling the Secretary of Agriculture in collaboration with the Association of Official Agri. Chemists to establish food standards and to determine upon adulterations. American Food Journal, June, 1906, p. 26.

3. Senator Hepburn is quoted as follows: "The necessity of a Federal pure food bill is almost obvious. Every State, save perhaps one, in the union, has adopted more or less efficient legislation of this character, and the prevention of the manufacture and sale of mis-branded or adulterated drugs, foods and liquors would be complete were it not for the 'unbroken package' decisions of the supreme court, under which one State is practically powerless against the importations of this class of goods from another State.

as a result of almost twenty years of agitation, analyses of foods and drugs by State and National chemists, and publication of such analyses, Congress, in 1906, passed the much needed and now well known Pure Food and Drug Act. This act unconditionally forbids the manufacture of impure foods in the territories and the District of Columbia and the interstate traffic and foreign commerce in the same.¹ The Secretaries of the Treasury, Agriculture, and Commerce and Labor are constituted a board to make uniform rules and regulations for carrying out the provisions of the act. The Bureau of Chemistry of the Department of Agriculture is charged with the examinations of specimens collected.

Under the Act drugs are deemed adulterated if they differ from the standard of strength, quality or purity of drugs recognized in the United States formulary unless such deviation from the standard is plainly stated on the package.

Confectionery must be free from poisonous or deleterious substances. Adulterated foods are also carefully described and defined.²

 "The fact that the various State legislatures have adopted pure food bills demonstrates that the people are alive to the necessity of such legislation, and the one link necessary to perfect the chain is a Federal bill which will cover interstate commerce, over which the States can exercise no jurisdiction----." American Food Journal, Jan., 1906, p. 11.

1. 34 United States Statutes at Large 771;

Food products, not meeting the requirements of the National Act, may be exported if they are put up according to the specifications of the foreign purchaser. Section 2, of National Act.

2. Foods are deemed adulterated as follows:

First: If any substance has been mixed or packed with it so as to reduce or lower or injuriously affect its quality or strength.

Second: If any substance has been substituted wholly or in part.

Third: If any valuable constituent has been ----withdrawn.

Fourth: If it be mixed, colored, etc., in a manner whereby damage or inferiority is concealed.

Fifth: If it contain any added poisonous ingredient.

Sixth: If it consists in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance, or part of diseased animal, or one that has died other wise than by slaughter.

Both foods and drugs are considered misbranded if the label on the same bears any statement or design which shall be false or misleading. If food is in package form, and the contents are stated in terms of weight or measure, they must be stated correctly. Deceptive labels or designs are prohibited.¹

Articles of food not containing any added poisonous or deleterious ingredients may be sold under their own distinctive names provided such name is accompanied with a statement of the place of manufacture. Trade formulas of proprietary foods need not be exposed.

Section nine provides that no dealer shall be prosecuted under the act when he can establish a guarantee signed by the wholesaler, jobber, manufacturer or other party in the United States from whom he purchased the articles, to the effect that the same is not adulterated or misbranded.²

In the following year, 1907, Congress passed the "Meat Inspection Act." This act forbids the interstate traffic in "any carcasses or parts thereof, meat, or meat-food products thereof, which have not been inspected, examined and marked as "Inspected and Passed". Meats entering interstate traffic must contain no preservatives of any kind injurious to health and all establishments

1. In the case of drugs, every package must contain a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis, indica, chloral hydrate or asacetanilide or any derivatives of such substances. In the case of foods, containing any of the above mentioned drugs, alcohol excepted, the label must contain a statement of such fact.

2. "The National food authorities located their offices and laboratory for the middle West on the North half of the sixteenth floor of the Manhattan building, at Chicago, Illinois. The Illinois food department occupies the South half of the sixteenth of the same building. Now when adulterated foods are discovered that have come across the border line of our State the same is handed over to the National food authorities to prosecute ---; and when it is discovered as adulterated, --contrary to the provisions of

where such meat products are prepared are subject at all times to Federal inspection.

The National Act of 1906 greatly assisted the States in protecting the consumer from fraud by keeping impure foods out of the channels of interstate commerce. It also served as a model for State legislatures and thus tended to establish greater uniformity in the State laws. The rules and regulations for the enforcement of the National Act were considered, from the first, practicable.¹

In 1907, Illinois amended its pure food laws in many important particulars. A "Food Standard Commission" is provided for. This commission is charged with the duty of determining upon and adopting standards of quality, purity, or strength for food products for the State.²

The condition, so much complained of under the old law, of holding the dealer responsible in the first instance for the character of the foods which he sold, has been remedied by both the National and the State laws. The State law provides that the dealer may produce in his defense a written guarantee from the wholesaler or manufacturer whose goods he handles, stating that such goods meet the requirements of the law. Such a statement will relieve the dealer from prosecution under the law. The National law contains a similar provision which until May 1, 1915, was carried out by means of the "serial number" method. The manufacturer or dealer in foods or drugs could file a guarantee with the Secretary of Agriculture -----
our State food laws, it is handed over to our State food authorities to prosecute as provided in our State food laws."

Illinois State Food Commissioner's Report, 1908, p. 4.

1. American Food Journal, Nov. 1906, p. 16.

2. "The 'Food Standard Commission' shall consist of three members, one of whom shall be the State Food Commissioner or his representative; one of whom shall be a representative of the Illinois food manufacturing industries and one of whom shall be an expert food chemist." Laws of Illinois, 1907, p. 544.

Under the old law, "Each case had to be proven by expert

and receive a serial number which was then placed on every package of the goods sold under the guarantee with the words, "Guaranteed under The Food and Drug Act of June 30, 1906." Thus no special guarantee had to be sent with every shipment of goods. But this serial number method caused too much misunderstanding and abuse. The consumers were made to believe that the government guaranteed the food products whereas the serial number represented the guarantee by the manufacturer that the goods complied with the National Food and Drug Act.¹

Under the new rule, the manufacturer, who desires to guarantee his goods may do so by incorporating such guarantee in the invoice, bill of lading, or bill of sale.

The new Illinois food law contains all the provisions of the National food law relative to misbranding and mislabeling and requires in addition that every manufactured article of food sold in package form shall be distinctly labeled, marked or branded with the true name of the article and with either the name and address of the manufacturer or the name and address of the packer or dealer who sells the same.

The act also contains all the provisions of the National act relative to adulteration.

Section forty of the act authorizes the food department to grant preliminary hearings to the accused violators of the law. It provides that the commissioner may cause notice of the violation to be given the accused, with a copy of the findings, and a hearing had on the same. After the hearing the commissioner shall, in his testimony, as if no other case had ever been tried. The uncertainty of conditions due to this weakness made it hard to convict and encouraged violators of the law to continue their transgressions." Illinois State Food Commissioner's Report, 1907, p. 12.

1. American Food Journal, Oct. 1907, p. 4. Ibid., 1915, p. 238.

discretion, either prosecute the accused or discharge him.

Confiscation of adulterated and misbranded foods is also authorized and the possession of such articles is prima facia evidence of guilt.

The law of 1907, as changed in minor details by amendments and revisions in 1909,¹ 1911,² 1915,³ and 1917⁴ is the pure food law of the State at the present time.

An act having for its object the regulation of the sale of concentrated feedstuffs was passed by the legislature in 1905.⁵ According to this law every lot of concentrated feedstuffs sold shall have affixed thereto a plainly printed statement, certifying the name or brand under which it is sold, name and address of manufacturer or dealer, the net weight of the package and a description of the contents.

1. The amendment of 1909 to the act of 1907 eliminates condensed milk and evaporated cream from the list of articles for which a standard of purity and strength had been set. Laws of Ill., 1909, p. 423.

2. A new section provides that a license must be secured by everyone before operating a milk or cream testing apparatus to determine the percentage of butter fat in milk or cream for the purpose of purchasing the same either for himself or for another. Ibid., 1911, pp. 519 ff.

3. The most important clause in this amendment provides that all foods in package form must contain on the outside of the package in plain and conspicuous markings the quantity of the contents in terms of weight, measure, or numerical count. The sale and shipment of other than fresh eggs is also regulated in detail. Ibid., 1915, pp. 70 ff.

4. Several amendments were made during the 1917 session. One act provides for the testing of milk by the Department of Agriculture. Another act provides for the registration by the Secretary of State of marks and brands to be used upon cans, bottles, or other containers of dairy products. A third act is an amendment to the act of 1915, regulating the sale and shipment of other than fresh eggs. According to this act, eggs unfit for human food must be broken and denatured before shipment. "Breaking Stock" eggs must be shipped only in packages sealed with proper identifying strips approved by the Department of Agriculture. Illinois Laws, 1915, pp. 700 ff. Ibid., 1917, pp. 768 ff.

Under the subject "State Food Commissioner" there was also passed, in 1917, an act regulating the sale of paints and oils and fixing a standard of strength and purity for these products.

Ibid., 1917, p. 769. 5. Ibid., 1905, pp. 393 ff; 1911, p. 527.

The duties of the State food commissioner and his assistants increased annually. The number of samples collected by the inspectors also increased. In the year 1909, 7,606 samples were taken and analyzed. Of these 4,841 were found in conformity with the law and 2,765, or 36 per cent, not so conforming.¹ In the following year, 1,222 samples of stock food were analyzed; 776 were found up to the standard and 446 not in conformity with the law.² The results of the stock food law were reported as good.

In 1911, the "Sanitary Food Law" was passed for the purpose of "preventing the preparation, manufacture, packing, storing, or distribution of food intended for sale--- under unsanitary --- or unclean conditions-----." This act provides that every building used as a place for the manufacture, storage, distribution or sale of foodstuffs, as well as hotels and restaurants, must be kept in a wholesome sanitary condition and be properly drained, lighted, and ventilated.

The State food commissioner is charged with the administration and enforcement of this act which greatly aids the Food Department in enforcing the pure food laws of the State and in securing pure foods for the consumer.³ It is, however, impossible for the Food Department to inspect all the establishment handling foodstuffs annually. In the year 1914, for example, 13,485 establishments were inspected and there were also 5,256 re-inspections.⁴ As a result of this work the inspectors destroyed 39,402 pounds of decomposed meat, fish, and poultry, 10,218 cans of spoiled canned goods, 11,331 pounds of contaminated dried fruits, 7,088 pounds of dirty candy and confectionery, and 18,027 pounds of miscellaneous

1. Illinois State Food Commissioner's Report, 1909, p. 4.

2. Ibid., 1910, p. 240.

3. Laws of Illinois, 1911, p. 528 ff.

4. Illinois State Food Commissioner's Report, 1914, p. 12.

foodstuffs. They also condemned 45, 595 pounds of flour and 286 cases of eggs.

In the year 1911, 3,622 samples of food were taken, 2,432 of which met the requirements of the law and 1,190, or 32 per cent, of which did not so qualify.¹ During the following year 6,523 samples were taken, 4,432 of which were up to the standard and 2,091, or 32 per cent, did not so conform.²

The State food commissioner reports that "the per cent of illegal samples cannot be taken as a basis for judging actual trade conditions of the entire State-----. On the other hand, the per cent together with the actual number of illegal samples are significant of the fact that violations of the law are still common, especially in certain food products." The worst offenders are those handling milk and eggs.³

By the Civil Administrative Act of 1917, the offices of State food Commissioner, Food Standard Commission, and the State Game and Fish Commission are placed under the direction of the Department of Agriculture created by that act.⁴

1. Illinois State Food Commissioner's Report, 1911, p. 22.

2. Ibid., 1912, p. 10.

3. Ibid., 1914, p. 17.

4. Laws of Illinois, 1917, pp. 2 ff.

The enforcement of an act to prevent fraud in the manufacture and sale of commercial fertilizers is also placed under the supervision of the Department of Agriculture.

6. Regulation of The Sale of Drugs. The power to regulate the manufacture and sale of drugs and medicines is as clearly within the police power of the State as is its authority to regulate the manufacture and sale of foods and drinks. On account of the probable serious results attendant upon the use of faultily compounded drugs, no less than upon the use of adulterated drugs, much of the regulation has for its object the elimination of the unskilled dispenser by requiring all pharmacists to register after meeting certain exacting qualifications.

Such qualifications were first required in the State of Illinois by a comprehensive act passed in 1881.¹ This law provides for the appointment of five persons, of ten or more years experience in the dispensing of physicians' prescriptions who shall constitute the State Board of Pharmacy. This board is charged with the duty of examining applicants for registration, prosecuting violators of the provisions of the act, and making annual reports to the governor and to the Illinois Pharmaceutical Association upon the conditions of pharmacy in the State.

A person, in order to be registered within the meaning of the act, either had to be a graduate in pharmacy, a graduate in medicine, or he had to be engaged in the business of a dispensing pharmacist on his own account in the State at the time the act took effect or he had to be a licentiate in pharmacy.² The requisite qualifications for pharmacists, as fixed by this act, have been raised from time to time.

1. Laws of Illinois, 1881, pp. 120 ff.

2. Graduates in pharmacy were described as such persons who had had four years of practical experience in drug stores and had obtained a satisfactory diploma from a regularly incorporated school of pharmacy.

Licentiates in pharmacy were described to be such persons as

The adulteration of drugs and medicines was also prohibited by the act of 1881. The adding to or the removing from any drug or medicine any ingredient or material for the purpose of adulteration or substitution is prohibited. A criminal law, passed by the same legislature, forbids the mixing, coloring, or staining of any drug or medicine provided such coloring or staining injuriously affects the quality of such drug or medicine.¹

Proprietary medicines may be sold by any person in this State. An attempt was made in 1895 to limit the sale of such medicines to druggists. The legislature granted to the Board of Pharmacy the discretionary power of issuing permits to persons or companies empowering them to sell proprietary medicines.² This provision, of an act of 1895, was however declared unconstitutional by the State Supreme Court on the ground that it delegated legislative power to the board.³ It was further urged that as the vendor of proprietary medicines did not examine into its contents, no purpose was served by limiting the sale of such medicines to druggists or any other class or classes of vendors.⁴

 had had two years of practical experience in drug stores and had passed a satisfactory examination before the State Board of Pharmacy.

For more exacting requirements made by later laws see: Laws of Illinois, 1887, p. 250; 1889, pp. 219 ff.; 1895, pp. 245, ff.; 1901, pp. 238 ff.; 1907, pp. 379, ff.

According to the amendment, made in 1889, a licentiate in pharmacy and one who has had five years of practical experience in a drug store is entitled to be registered. The Board of Pharmacy, upon satisfactory proof that an applicant is registered in another State, may grant a certificate of registration.

Section 14, of the amendment of 1895, provides that every package containing drugs or medicines shall contain a label, bearing the name of the article and the name and place of business of the registered pharmacist.

The act of 1907 makes good moral character and temperate habits a prerequisite to becoming a registered pharmacist.

1. Laws of Illinois, 1881, pp. 75 ff. All poisons must be so labeled.

2. Ibid., 1895, pp. 245 ff. 3. Noel v. People, 187 Ill. 587.

4. Section 12, of an act of 1901, provides that proprietary medicines, when sold in original packages, need not contain a label bearing the name of the contents. Laws of Illinois, 1901, pp. 238.

The sale of cocaine and salts and compounds of cocaine have, for apparent reasons, been carefully regulated, particularly during the last twenty years. An act of 1897 forbids the sale of such drugs except upon the written prescription of a licensed physician or dentist.¹ Later acts forbid the sale of the same to habitual users under any conditions whatsoever.²

The State pharmacy laws are inadequate in one important particular; no proper inspection force is provided. An attempt to overcome this defect is seen in the law requiring all druggists and pharmacists to keep on file, for a period of not less than two years, the original of every prescription filled.³

The State food commissioner has advocated that the administration of the drug laws, as well as that of the food laws, be left to the inspection department created by the State food laws.⁴ The State legislature has not followed this recommendation, but, in the Civil Administrative Code of 1917, it has delegated

1. Laws of Illinois, 1897, p. 138. An amendment made to this act in 1903 requires that the name of the patient be written upon the package. Ibid., 1903, p. 248.

In 1914, Congress passed an act to the effect: "That on and after the first day of March, 1915, every person who produces, imports, manufactures,----deals in, sells, -----or gives away opium or coca leaves or any compound, manufacture, salt, derivative, or preparation thereof, shall register with the collector of internal revenue of the district his name ----, place of business,---; Provided,-----at the time of registry and -----annually thereafter, every such person----- shall pay to the said collector a special tax at the rate of one dollar per annum." United States Statutes; 1914-1915, pp. 785 ff.

The Illinois legislature, in 1915, amended the pharmacy act to the effect that only those registered according to the act of Congress may deal in any opium or coca leaves or their products.

Preparations or remedies containing less than 2 grains of opium, 1/4 grain of morphine, 1/8 grain of heroin, or 1 grain of codine or any salt or derivative of any of them in one fluid ounce are not subject to the act of Congress. Act of Congress, Dec. 17, 1914.

2. Laws of Illinois, 1908, pp. 88 ff.

3. Ibid., 1915, pp. 500 ff. The law of 1911 required such prescriptions to be kept for a period of five years.

4. Illinois State Food Commissioner's Report, 1912, p. 23.

all the rights, powers, and duties vested by law in the State Board of Pharmacy to the department of Registration and Education. This department is also authorized to make rules for the establishment of a uniform and reasonable standard of educational requirements to be observed by colleges of pharmacy.¹

1. Laws of Illinois, 1917, pp. 2 ff., and pp. 592 ff.

Nearly every legislature, since 1881, has amended or revised the existing pharmacy laws or has passed new laws on the subject.

An act of 1901 empowers the Board of Pharmacy to employ an analyst who shall examine into the so claimed adulterations and substitutions. Laws of Illinois, 1901, pp. 238 ff.

An act of 1907, made the standard of the United States Pharmacopoeia or National Formulary the standard of strength, quality, and purity for the Illinois druggists and pharmacists.

By an act of 1907, it is made unlawful for any person or company to manufacture, give away, or sell embalming fluids which contain arsenic or strychnine without having the words "arsenic contained herein" or "strychnine contained herein" (as the case may be) written or printed upon the label. No undertaker or other person shall embalm with, inject into or place upon, any dead human body any fluid containing arsenic or strychnine.

The same legislature passed an act to regulate the sale of Paris green. Every lot or parcel of Paris green, sold shall have affixed thereto a printed label bearing the words, "High Grade, for insecticide Purposes" or the words, "Not for insecticide purposes."

All "High Grade" Paris green shall have affixed to the container the name and place of manufacture, net weight and percentage of the various contents. A standard of strength is fixed by the act. Laws of Illinois, 1907, pp. 267 ff.

7. Power of Cities to Regulate The Sale of Food. "Express authority to pass ordinances regulating the sale of foods is conferred ordinarily upon municipal corporations."¹ Ordinances passed under such delegated authority must however not be in conflict with the laws of the State, and the laws of the State will continue to operate in the city unless its charter clearly provides otherwise.²

Under the statutes of 1860, of this State, the president and trustees of any incorporated town were authorized to make and execute such ordinances, not inconsistent with the laws or constitution of the State, as they deemed necessary to regulate and establish markets.³ Incorporated towns were also granted exclusive privileges of granting licenses to keep groceries.⁴

The first legislature which met after the adoption of the constitution of 1870 passed a very comprehensive act providing for the incorporation of cities and villages.⁵ The powers of the city councils are set forth in minute detail.⁶ The city councils and boards of trustees of towns and villages are granted jurisdiction to regulate the sale of liquor, meats, dairy products, vegetables, and all other provisions and to provide for the place and manner of selling the same. City authorities may also provide for and regulate the inspection of all foodstuffs sold within their limits.

1. Ruling Case Law, p. 1100.

2. "Police regulations enacted by a city under a general grant of power may differ from those of the State upon the same subject, provided they are not inconsistent therewith." *Chicago v. Union Ice Cream Company*. 252 Ill. 311.

3. Statutes of Illinois, 1860, p. 196; Revised Statutes of 1845, Chapter 25.

4. Groceries are places where liquors are sold in small amounts. By an act of 1869, the mayor and aldermen of cities are authorized to appoint inspectors of mineral oils used for illuminating purposes. *Public Session Laws*, 1869, p. 259.

5. Prior to 1870, powers to regulate the sale of foods was delegated to cities and villages in the special charters conferred.

6. *Laws of Illinois*, 1871, pp. 224 ff.

The act of 1871, as amended and revised in minor points, is the present law delegating jurisdiction to the cities and villages of the State to regulate the sale of foods and drinks.

The powers of cities and villages to regulate the sale of foods is not affected by the State pure food act of 1907. In *Chicago v. Union Ice Cream Manufacturing Company*, the Supreme Court of the State held: "The passage of the pure food law of 1907 did not deprive cities and villages of the power given by the provisions of Article V. of the cities' and villages' act to regulate the sale of impure and adulterated food by ordinances not inconsistent with such statute."

The courts have always been liberal in construing powers delegated to cities and villages. No food regulatory powers have at any time been held as unconstitutionally delegated, and their exercise by the municipalities has been upheld by the State courts provided they were reasonably exercised.¹

An act giving cities power to provide for the regulation and inspection of meats has been held to confer power to establish a public slaughter house for the purpose of securing proper inspection of fresh meats.²

An ordinance requiring that the weight of bread sold be labeled thereon in pounds has been upheld.³ An ordinance making it unlawful to cover fruit with colored netting has been held unreasonable.⁴

In *City of Chicago v. Bowman Dairy Company*, it was held: "--the Revised Municipal Code of Chicago which requires dealers selling cream and milk in bottles or glass jars to have the capac-

1. *Koy v. City of Chicago*, 263 Ill. 122.

2. *Huesing v. City of Rock Island*, 25 Ill. App. 600; Reversed 128 Ill. 465.

3. 174 Ill. App. 64. 4. *Frost v. City of Chicago*, 178 Ill. 250.

ity of the bottles or jars permanently indicated on them, and prescribes a penalty for having in their possession bottles or glass jars of a capacity of less than that indicated on the outside, or which do not indicate their capacity, is valid as being within the police power of the city." ¹

In *Koy v. City of Chicago*, the Supreme Court held that the legislatures and city councils in the exercise of police power, may prohibit all things hurtful to the health and safety of society, even though the prohibition invades the right of liberty or property of an individual. ²

A statute empowering a municipality "to direct and regulate the weight and quality of bread, the size of the loaf, and the inspecting thereof" has been held valid. ³

In July of 1908, the city of Chicago passed several ordinances wherein it was required that no milk, cream, buttermilk, ice-cream, butter or cheese should be sold or offered for sale in the city unless such products were made from the milk or cream obtained from cows that had given a satisfactory tuberculin test within one year: provided however that from Jan. 1, 1909, for a period of five years, such products made of milk obtained from cows not tuberculin tested or not free from tuberculousis may be sold in the city of Chicago if the milk or cream from which such products are made has been pasteurized according to the rules and regulations of the department of health in the city of Chicago.

1. 234 Ill. 294. 2. 263 Ill. 122.

3. *Chicago v. Schmidinger*, 243 Ill. 167. In 1909, an act was passed granting to city and village authorities the power "--to require all grains, flour, meal, hay, feed, seed, fruits, nuts, vegetables, and non-liquid vegetable products, meats, and non-liquid animal products, fish, butter, cheese, and other similar dairy products, dry groceries and all other articles of merchandise, or any particular class or classes of such merchandise, in the absence of a contract or agreement in writing to the contrary, to be sold by standard, avoirdupois weight or by numerical count." Laws of Ill.

The General Assembly considered such regulation unreasonable and appointed a committee of ten to investigate into the necessity of adopting the tuberculin test in the State of Illinois.¹ In the following session a law was passed making it unlawful for any city, village, or other incorporated authority in the State to demand or require the tuberculin test to be applied to dairy animals as a means of regulating and purifying milk or other dairy products.²

Laws of this character effecting industries outside of their corporate limits have been passed by cities in other States and have been held valid.³

With the increase in the number and size of cities in the State, the demand for laws, carefully regulating the manufacture and sale of the cities' food supplies, becomes more imperative. It would therefore seem that the Cities' jurisdiction in this field of police regulation ought to be extended. In many cases the only effective way to regulate the character of food supplied is to regulate the conditions under which and the manner in which it is produced. Such demands, made by the city on the producer outside of

Laws of Illinois, 1909, pp. 139 ff.

1. Ibid., 1909, pp. 492 ff.

2. Ibid., 1911, p. 6.

3. In *State v. Nelson* it was held: "It is competent for the city council, by ordinance, to require that an applicant for a license to sell milk within the city shall consent that the dairy herd from which he obtained his milk may be inspected by the commissioner of health of the city, although such dairy herd is kept outside the city limits.

"The requirement that he shall consent, as a condition precedent to obtaining such license, that the animals from which he obtains the milk shall be subjected to the 'tuberculin test', is not unreasonable." 66 Minn. 166. (1896).

A product which has frequently been the subject of regulation by both the legislature and city councils is mineral oil used for illuminating purposes. The State legislature in 1869 passed an act providing for the inspection and sale of mineral oils used for illuminating purposes. Under this act both cities and villages were authorized, on the petition of five or more inhabitants, to appoint suitable persons, not interested in the manufacture or sale of mineral oils, as inspectors. Such inspectors, when called upon by

its corporate limits prerequisite to such producer furnishing the city with its products, might work an initial hardship, but it does not appear that such requirements would work a permanent economic hardship on the producer.

The additional expense incurred by the dairymen, for example, in maintaining a herd meeting the requirements under the tuberculin test, will in the end be born by the consumer of the dairy products. If the demands are too onerous or if the extra expense incurred is not compensated immediately by a higher price for the products, production will be decreased and a higher price must consequently result.

The dairymen have no vested interest in the business of furnishing the city consumer with dairy products of a character that are not considered wholesome or are considered dangerous to life, and the consumer in the city is in the majority of cases unable to examine and analyze these products for himself, but must rely upon the municipal regulation to protect him.

The above reasoning would apply to the production of meats, fish, vegetables and fruits.

any manufacturer, refiner, producer or dealer of such oils, to test such oils, were obligated to make the necessary test.

All such oils igniting at a temperature less than 110 degrees F. were to be marked "Condemned for illuminating purposes." If such oils did not ignite or explode at less than 110 degrees F. temperature it was to be marked "approved---." Laws of Illinois, 1869, pp. 259 ff.

The above act was revised in 1871. Coal, naphtha, gasoline, benzine and other mineral oils sold for illuminating purposes are made subject to inspection. Ibid., 1871, pp. 566 ff.

In 1874 the standard for mineral oils was raised. The igniting point was placed at 150 degrees F. temperature. Ibid. pp. 731ff.

Other changes of minor importance were made by amendments and revisions in 1887, Ibid., 1887, p. 242; 1911, Ibid., 1911, p. 432; 1913, Ibid., 1913, p. 442; and in 1915, Ibid., 1915, pp. 531 ff.

8. Sale of Game and Fish and Traffic in Diseased Plants and Animals. Laws dealing with the sale of game and fish and with the traffic in diseased plants and animals are ordinarily of a prohibitory rather than of a regulatory character and, therefore, in the strict sense of the term, they may not be considered as regulations of mercantile business. The prime object of the laws relative to the sale of game and fish is to conserve these resources of the State. Traffic in diseased plants and animals is prohibited for the purpose of preventing the spread of contagious diseases.

An early act, regulating the traffic in game, prohibited the dealing in certain kinds of animals and birds during a given period of the year. The act applies to less than one-half of the counties of the State.¹

Every legislature from 1861 to 1871 inclusive made changes in either or both the fish and game laws. None of the acts passed during this period, with the exception of the fish law of 1871, applied to the State as a whole; the territory covered was, however, gradually extended.²

An act of 1873 revised and consolidated the previous acts and made the entire State subject to its provisions.³ All acts passed thereafter were general in their application.⁴

In 1899, it was provided that all packages containing

1. Part of the act applies to only fifteen counties and part of it applies to forty-four counties. No fish laws are found in the statutes of 1860. Transportation and storage companies are not made liable for having in their possession such game. Statutes of Illinois, 1860, pp. 545 ff.

2. In 1869, it was made unlawful for any common carrier to transport game taken in violation of the law. Ibid., 1869, pp. 188 ff.

3. Laws of Illinois, 1873, pp. 96 ff.

4. An act passed in 1889 again prohibited express companies and common carriers from receiving for shipment any game taken in violation of the game laws. Ibid., 1889, pp. 162 ff.

fish should bear a label disclosing in plain letters the fact that such package contains fish.¹ The nature of the same must also be indicated. Numerous laws have been passed specifying the size and weight of fish that may be sold.

According to a recent enactment, it is made unlawful for any person to ship any fish caught in any of the waters under the jurisdiction of the State, or to conduct a fish market for the purpose of buying and selling and shipping such fish, or as a wholesale dealer to buy and sell any such fish without first procuring a license so to do.²

The State undertakes to regulate the possession, use, and sale of fish and game on the grounds that the ownership of and title to all fish in any waters within its jurisdiction and all wild game within its boundaries are in the State.³

Traffic in diseased animals and plants has given rise to a number of legislative enactments in this State; the primary object of such legislation being not to prevent the sale of unwholesome foodstuffs, but rather to check the spread of disease among animals and plants within the State or the introduction of the contagion from without the State.

The importation of sheep affected with contagious diseases was prohibited as early as 1865.⁴ The following legislature passed an act making it unlawful for any one to bring into the State Texas or Cherokee cattle at any time during the year. This act was later so amended as to permit the shipment of such cattle into the State between the first of October and the first of March following.⁵

1. Laws of Illinois, 1899, pp. 233 ff. 2. Ibid., 1911, pp. 348 ff.
 3. Ibid. 1911, pp. 348 ff. 4. Ibid., 1865, p. 126.
 5. Ibid. 1867, pp. 402 ff. In 1867, it was prohibited to bring

The constitutionality of this act was early questioned on the grounds that it interfered with interstate commerce. In *Yeazel v. Alexander*, the State Supreme Court held the statute to be a proper and legitimate exercise of the police power of the State and not in violation of the Constitution of the United States.¹ In 1872, the State of Missouri passed an act, similar to the Illinois law, prohibiting unconditionally the importation of Texas or Cherokee cattle into that State during a certain period of the year. A case, arising under this act, was carried to the Supreme Court of the United States.² The Supreme Court held that the statute was more than a quarantine measure and not a legitimate exercise of the police power of the State. The Court said: "While we unhesitatingly admit that a State may pass sanitary laws, and laws for the protection of life, liberty, health or property within its borders; while it may prevent persons and animals suffering under contagious or infectious diseases,---- from entering the State; --- while for purposes of self-protection ----it may establish quarantine, and reasonable inspection laws, it may not interfere with transportation into or through the State, beyond what is absolutely necessary-----". The Statute of Missouri is a plain intrusion upon the exclusive domain of Congress. It is not a quarantine law. It is not an inspection law----." The Court also made special reference to the Illinois law and to the decision in *Yeazel v. Alexander* as being unconstitutional. In 1879, two cases which arose under the Illinois law were carried to the Supreme Court of the State.³ The State Court at this time, basing its decision on *Railroad v. Husen*, the Missouri case, declared the Illinois law

into the State Canada Thistles. *Ibid.*, 1867, p. 79.

1. 58 Ill. 254. 2. *Railroad v. Husen*, 95 U.S. 465, (1877).

3. *Salzenstein v. Mavis*, 91 Ill. 391; *C. and A. Railroad Co. v. Erickson*, 91 Ill. 613; 94 Ill. 164, *Jarvis v. Riggins*.

unconstitutional; thus reversing the decision made in *Yeazel v. Alexander*.

The rule established by the United States Supreme Court in *Railroad v. Husen* and in later cases is that a measure interfering with interstate commerce must be primarily a quarantine measure. In *Kimmish v. Ball*, the United States Supreme Court upheld an Iowa law prohibiting any person from bringing into the State any Texas cattle unless such cattle had been wintered at least one winter north of the southern boundary of the State of Missouri or Kansas.¹ In *Reid v. Colorado*, the Supreme Court held: "It is quite true, --- that the transportation of live stock from State to State is a branch of interstate commerce and that any specified rule or regulation in respect to such transportation, which Congress may lawfully prescribe ----- and which may properly be deemed a regulation of such commerce, is paramount throughout the Union. So that when the entire subject of the transportation of live stock from one State to another is taken under direct national supervision and a system devised by which diseased stock may be excluded from interstate commerce, all local or State regulations ---covering the same ground will cease to have any force, -----;and such rules or regulations as Congress may lawfully prescribe or authorize will alone control.-----The power which the States might thus exercise may in this way be suspended until national control is abandoned and the subject be thereby left under the police power of the States."²

As a result of the prevalence of pleuro-pneumonia among cattle in this and other States, a law was passed in 1881 for the purpose of preventing the spread of the disease. The governor up-

1. 129 U.S. 217, (1888). Section 4058, Code of Iowa.

2. 187 U.S. 137.

on sufficient evidence that the disease was epidemic in certain localities in other States was authorized to stop by proclamation the shipment of cattle from such localities into this State unless accompanied by a certificate of health.¹

A bureau of Animal Industry, to prevent the exportation of diseased cattle, and to provide means for the suppression and extirpation of pleuro-pneumonia and other contagious diseases among domestic animals, was provided for by Congress in 1884.² Interstate traffic and foreign commerce in animals infected with contagious disease is prohibited.

The Illinois legislature, three years later, passed an act, revising the former acts, by authorizing the governor of the State to co-operate with the National Bureau of Animal Industry in the prevention of traffic in diseased animals.³ A law preventing the transportation of cattle suffering with splenic or Texas fever was re-enacted in 1889. This law is strictly a quarantine measure and is in force at the present time.⁴

The plant disease most vigorously fought is the San Jose scale. The first act having for its object the prevention of the spread of the disease was passed in 1899. This act provides that all trees, shrubs, plants or vines shipped into the State, from other States, country or province shall be properly labeled with the name of the consignor and shall be accompanied by a certificate showing that the contents have been inspected by a State or National government officer and that such plants are free from all dangerous insects or diseases.⁵

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1. Laws of Illinois, 1881, pp. 6 ff. This act was revised in 1885.
 2. United States Statutes, 1883-85, Congress 48, pp. 31 ff.
 3. Laws of Illinois, 1887, pp. 8 ff. Vide, 1915, p. 3. 203 Ill.148.
 4. Ibid., 1889, pp. 5 ff. Revised Statutes, 1911, p. 62.
 5. Ibid., 1899, pp. 49 ff. This act was revised in 1907; Ibid., 1907, p. 538.

9. Litigation and Principles Established.¹ Certain rules laid down and principles established by superior courts in recent cases involving the validity and construction of pure food laws are of basic importance in the enactment and enforcement of pure food legislation. The effectiveness of such legislation does not depend upon the care with which the laws are drawn up, but upon the decisions of the courts holding them consistent with the organic law of the State, established principles of justice, and the valid exercise of the police power.

Although the above reasoning may be applied to legislation within any field, it is particularly true in the field of pure food regulation. In a new field of regulation, neither the legislatures nor the courts are able to find precedents to guide them; thus the first rules laid down and principles established by the courts are of the greatest importance.

As has been stated in a previous section, the validity of pure food and drug legislation, as a proper exercise of the police power of the State, is not questioned by the courts provided such legislation is reasonable, having for its object the suppression of a nuisance or the furthering of public health and morals.²

One of the rules early laid down by the Federal Courts and of greatest importance in food legislation is the rule relative

1. The above subject has been so thoroughly treated by a number of writers, notably by Thornton in his work "Pure Foods and Drugs", that it seems almost superfluous to add this section to the chapter on pure food and drug legislation. But because of the newness of regulation in this field, the principles recently established and the rules laid down by Federal Courts and superior courts of States other than the State of Illinois are of paramount importance in the enactment, interpretation, and enforcement of Illinois laws, and therefore it seemed that it might not be inappropriate to add this brief section.

2. Vide Supra p. 66.

to the "Original or Unbroken Package." It was early established by the Supreme Court of the United States that goods received by interstate commerce remain under the shelter of the interstate commerce clause of the constitution, until by a sale in the original package they have been commingled with the general mass of property in the State.¹ If the original package is broken or if it is sold by the importer it ceases to be an "Original Package."

A more difficult problem is, what constitutes the "Original Package." In *Austin v. Tenn.*, and in *Cook v. Marshall County*, the Supreme Court of the United States held that the package must be such as represents a bona fide transaction.²

In a number of cases it has been held that a State may prohibit the sale, in the original package, of an adulterated or impure food or drug. In *Vance v. Vandercook Co.*, the Supreme Court held that "the power to ship merchandise from one State to another carries with it, as an incident, the right in the receiver of the goods to sell them in the original packages,----and State regulations to the contrary notwithstanding -----." ³ But in this case the Court was dealing with a recognized article of commerce.

1. *Brown v. Maryland*, 12 Wheat. 419; *Leisy v. Harden*, 135 U.S. 100.
 2. The legislature of Tenn. in 1897, passed an act to prohibit the sale of any cigarettes or introduction of them into the State for that purpose. *Austin*, a merchant in Tenn., purchased from a factory in North Carolina a number of packages of cigarettes, put up in small boxes, containing ten cigarettes each; then he securely pasted over the top of each box a U.S. revenue stamp. The factory placed the boxes on the floor in its warehouse and an agent of an express company took them away in a large basket without a cover. They were sent in this way to Tenn. and delivered to *Austin*, the express agent carrying the basket away with him. The State Court and the United States Supreme Court both held that the basket was the original package and *Austin* was found guilty. 179 U.S. 343.

Cigarettes were shovelled into a car in Mo. and delivered to *Cook* in Iowa. *Cook* sold them as original packages. *Cook* was found guilty in both the State and the Federal courts. It was held that the individual boxes did not represent bona fide transactions. 196 U.S. 261.

3. 170 U.S. 438.

In *Schollenberger v. Pennsylvania*, the court held that the State of Pennsylvania had no power to prevent the importation of oleomargarine within its limits and the sale of it in the original package by the importer. But this right of sale was not held to extend beyond the first sale by the importer after its arrival within the State. Oleomargarine was recognized as a wholesome food and therefore could not be excluded from the State by the State legislature. It was considered a proper article of interstate commerce.¹ But adulterated articles are not so considered and therefore a State statute which prohibits the sale of adulterated foods and drugs has been held as not repugnant to the commerce clause of the Federal Constitution.² "The State may prohibit the sale of such foods or drugs, although they be offered for sale in the original package."³ In *People v. Price*, the Illinois Supreme Court held: "If a dealer sells an injurious preservative in Illinois in violation of the pure food law, he is not protected by the fact that the preservative was manufactured in another State and sold in Illinois in the original package."⁴

In decisions made under the National Food and Drug Act of 1906, the Supreme Court has held that the packages in interstate commerce in violation of the Act may be seized while in the hands of the importer. According to Section 2 of the Act, however, the importer is not liable until he shall have delivered, in original packages, an adulterated article to another person.⁵

1. 171 U.S. 1. For cases reaffirming the rule that a State may not under the guise of police regulations interfere with interstate commerce, see: "*Minn. v. Barber*" 136 U.S. 313; and "*Brimmer v. Rebman*" 138 U.S. 78. In "*McDermott v. State of Wis.*" 228 U.S. 115, a Wisconsin law repugnant to the National Pure Food and Drug Act was held unconstitutional.

2. Vide *Supra*, p. 104. 3. "*Plumley v. Mass.*" 155 U.S. 461; "*Crossman v. Lurman*" 192 U.S. 189.

4. 257 Ill. 587, (1913).

5. The *Hipolite Egg Company* shipped 130 separate cans of eggs

The rule as to what foods may be prohibited from being manufactured or sold is fairly well established. The general principle, although not consistently followed by the courts, is that "articles of food universally conceded to be so wholesome and innocuous that the court may take judicial notice of it", may not be absolutely prohibited from being sold within the State or imported from another State.¹ "But if there is a dispute as to the fact of its unwholesomeness for food or drink, then the legislature can either regulate or prohibit it."²

The power of the State to prevent the manufacture and sale of food products in imitation of other products, even though such imitations contain no ingredients injurious to health, but are conducive to fraud, may be prohibited. Oleomaragarine cases have definitely established this principle. "Not only may the legislature protect the health of the people of the State, but it may prevent deception in the sale of food products."³ The cases on this point are numerous. On the other hand, laws suppressing the manufacture and sale of food products not conducive to fraud, may not be passed.

In *State v. Hanson*, the Supreme Court of the State Minn. declared a law unconstitutional which provided that no one should manufacture or sell oleomaragarine which should be in imitation of -----
from St. Louis, Mo. to itself at Peoria, and placed them in their storeroom in their bakery factory for the purpose of using them in their bakery products. The government seized them because they were adulterated and entered judgement for costs against the company. The court held in part as follows: "adulterated articles are, while in interstate commerce, made culpable as well as their shipper; while original packages they can be seized and they carry their own identification as contraband of law;----

"In a proceeding in rem under section ten of the pure food and drug act the court has jurisdiction to enter personal judgment for costs against the claimant.

"The object of the law is to keep impure and adulterated articles out of the channels of commerce." 220 U.S. 45. (1910).

1. 114 Pa. 265; 127 U.S. 678. 2. 190 Mo. 464; 99 N.Y. 386. 3. Ibid.

butter of any shade or tint of yellow. The court held that the manufacture and sale of food products produced by natural and essential ingredients, even though such products resemble butter, could not be prohibited.¹

A statute of New Hampshire provided that all substitutes for butter must be colored pink before being sold. In a case arising under this act, the court held that the act necessitated and provided for adulteration, and if this provision for coloring the article were a legal condition, a legislature could not be limited to pink in its choice of colors, but might choose red, black, blue or any other color. It might also provide that the articles be so mixed as to have an offensive odor. This act was also declared unconstitutional.²

In the same year a similar law in the State of Minnesota was held constitutional by a lower Federal court.³

The power of the State legislature or of a municipal council to fix a standard of quality and purity for milk is guaranteed. The sale of milk from diseased cows or from cows fed on still products may be prohibited.⁴ Milk containing preservatives, even though such preservatives are not detrimental to health when used in proper amounts, may also be prohibited.⁵

The sale of patented foods may be regulated.⁶ The sale of food, other than milk, containing preservatives, provided such preservatives are not injurious to health, may not be prohibited according to many decisions.

1. State v. Hanson, 118 Minn. 85, (1912).

2. Collins v. New Hampshire, 171 U.S. 30, (1897).

3. Armour Packing Co. v. Snyder, 84 Fed. 136, (1897).

4. 80 Alt. 30, (New York Case).

5. 46 La. 147; 66 Minn. 166; 182 R.I. 368; 144 Wis. 371.

6. 113 Fed. 616.

An ordinance prohibiting the sale of fresh pork between June 1, and Oct. 1, has been held unreasonable. Vide 39 L.R.A. 266. (Ark.)

It is held that the preservation of foods and the arrest of their tendency to decay is a proper and lawful object.¹ The sale of foods containing injurious preservatives may however be prohibited under all conditions.²

A decision which will undoubtedly have far reaching effects was handed down by the Supreme Court in United States v. Lexington Mill and Elevator Company, 1914.³ This case arose under the National Food and Drug Act of 1906. A number of sacks of flour had been shipped from Lexington, Nebr. to Castle Mo. While still in the original packages, the United States District Court rendered judgment directing the seizure of the flour on the ground that the flour had been treated by the Alsop Process and hence was adulterated. The case was carried to the Circuit Court of Appeals where the decision of the lower court was reversed. From the Circuit Court it was carried to the United States Supreme Court for review.

The Supreme Court held in substance as follows: "The primary purpose of Congress in enacting the Food and Drug Act of 1906 was to prevent injury to the public health by the sale and transportation in interstate commerce of misbranded and adulterated food.

"As against adulteration the statute was intended to protect the public health from possible injury by adding to articles of food consumption poisonous and deleterious substances which might render such articles injurious to health.

"In subdivision five, Section 7, of the Food and Drug Act of 1906, the word 'may' is used in its ordinary and usual signification; and if an article of food may not by the addition of a small amount of poisonous substances by any possibility injure the health of any consumer, it may not be condemned under this subdivision of the act."

1. 169 N.Y. 53; 190 Mo. 524. 2. 257 Ill. 587. 3. 232 U.S. 399.

The principle established by the above decision is to the effect that poisonous materials may be added to foods as long as it cannot be proven that the addition of such poisons is injurious to health. Hence it will hereafter be necessary, not only to prove that poisonous materials have been added, but that the addition of such substances has rendered the food injurious to health.¹

Implied Warranty. The principle of "Implied Warranty," a rule at common law, if affected by pure food legislation, has been strengthened by such legislation.

There is an implied warranty in the case of a sale of food that it is sound and wholesome and fit for consumption.² In *Wiederman v. Keller*, the Illinois Supreme Court restated the old rule as follows: "A retail dealer impliedly warrants the wholesomeness of articles of food sold for domestic use----and is liable in damages if they prove unwholesome, whether he was aware of their condition or not."³ But it seems that a new problem has arisen under modern conditions of manufacture and sale of foodstuffs. It is no longer possible for the retailer to inspect the majority of food articles which he sells. The problem arises as to the liability of the manufacturer to the consumer of foodstuffs when there are no contractual relations between the two parties. The old rule was that a manufacturer or seller is not liable to those with whom he has no contractual relations even though the latter sustain injuries as a result of negligence on the part of the former. In *McCaffrey v. Mossberg*, a leading case, the court divided into three classes

 1. The decision in the Bleached Flour case was hailed as a great victory by the manufacturers of foods. It was considered a sane and consistent interpretation of the Pure Food Act. "American Food Journal" 1914, pp. 110 ff. For an opposite view see Folin, "Preservatives and Other Chemicals in Foods" pp. 53 ff.

2. *Sheffer v. Willoughby*, 163 Ill. 518; 193 Ill. App. 620; *Chapman v. Roggenkamp*, 182 Ill. App. 117.

3. 171 Ill. 93, (1898).

those cases involving the liability of a manufacturer to consumers of his products when there are no contractual relations between such manufacturer and consumer: "First, The manufacturer is liable if he is a manufacturer of poisonous and other dangerous substances; Secondly, If the manufacturer is guilty of fraud and deceit in selling the article; Thirdly, When the thing is not itself dangerous, though the manufacturer has been guilty of negligence, there is no liability."¹

The manufacturer of foodstuffs comes apparently under the third class and hence no liability would attach to him according to the reasoning of the court. But the dealer can no longer inspect the foods which he sells, and the courts have taken cognizance of this fact and have held the manufacturer liable for negligence. The legislatures, both State and National, have recognized this fact in their enactments of criminal laws relative to the sale of adulterated foods. The serial number system and the guarantee clause provisions, either incorporated into the law or established by rulings by the proper commissions, evidence this fact.

In many recent cases the liability of the manufacturer has been definitely stated.² In *Tomlinson v. Armour and Company*, the court held that "--irrespective of the presence or absence of contractual obligations arising out of the dealings between manufacturer and retailer, and between retailer and consumer, the manufacturer of canned goods is under a duty to him who, in the ordinary course of trade, becomes the ultimate consumer, to exercise care that the goods which he puts into cans and sells to retail dealers, ---are wholesome and fit for food and not tainted with poison."³

1. 23 R.I. 381.

2. 219 Ill. 421; 75 N.J.L. 748; 107 Minn. 104; 163 N.Y.S. 396.

3. 75 N.J.L. 748, (1908).

In *Freeman v. Schultz Bread Company*, the court held that "--one injured by biting into a nail embedded in bread which he bought from a grocer establishes his right to recover against the baker by proof that the nail was in the bread when it left the bakery, without any proof of negligence in the baking."¹ In the above and in many other cases, courts have definitely established the liability of the manufacturer, but nothing was said relative to "Implied Warranty" or contractual relations. All were cases in tort.

In a few cases, however, the courts have gone farther in their declarations. In *Park v. Yost*, the court declared: "A manufacturer or dealer who puts human food upon the market for sale or for immediate use does so upon an implied representation that it is wholesome for human consumption. Practically he must know it is fit for food or take the consequences if it proves destructive."²

In *Mazetti v. Armour and Company*, "Implied Warranty" on the part of the manufacturer of foodstuffs was definitely expressed.³ The court held: "We would be disposed to hold on this question that, where sealed packages are put out and it is made to appear that the fault, if any, is that of the manufacturer, the product was intended for the use of all those who handle it in trade as well as those who consume it.

"Our holding is that, in the absence of an express warranty of quality, a manufacturer of food products under modern conditions impliedly warrants his goods when dispensed in original packages, and that such warranty is available to all who may be damaged by reason of their use in the legitimate channels of trade.

1. 163 N.Y.S. 396, (1916). 2. 93 Kan. 334, (1914).

3. 75 Wash. 622, (1913). A restaurant keeper in Seattle sold to a customer some prepared tongue. The customer on discovering that the product was unwholesome publicly denounced the matter. The restaurant keeper sued Armour and Company for damages because of loss of trade. He had purchased the tongue from a local grocery.

"We regard this case, in so far as the dealer is permitted to sue the manufacturer, as one of first impression. We think the complaint states a cause of action. If there is no authority for the remedy, 'it is high time for such an authority.'"

In its effects upon the relation of the manufacturer to the consumer, with whom the manufacturer has no privity of contract, it matters little whether the plaintiff can bring his case in tort or assumpsit. The important fact is that the courts have recognized such a relation where the dealing is not in things poisonous or dangerous per se and where no fraud or deceit are involved.

The criminal laws relative to the manufacture and sale of foods and drugs have strengthened the consumers' claims to damages since the establishment of violation of pure food laws is prima facia evidence that the manufacturer has been guilty of negligence if not outright fraud. Frequent claims for damages may in turn be more effective in securing pure foods and drugs than penalties imposed under the criminal law.

CHAPTER III

Monopolies and Unfair Methods of Competition

1. Monopolies and Restraint of Trade at Common Law in The State of Illinois prior to 1891.

Introduction. Monopoly in the economic sense signifies such control of the supply or the demand of one or more kinds of goods as will enable the monopolizer to fix the price of such goods at a point higher or lower than competitive forces would fix it. The term monopoly is as old as the practice.¹

The phrase "Unfair Competition" or "Unfair Methods of Competition" is of more recent origin. It is supposed by some writers that the term was first used by Lord Eldon in Hogg v. Kirby, a case decided in 1803.² The phrase has not been clearly defined and hence its meaning as used by different writers varies. One condition, however, that is common to all methods of competition called "Unfair" is the presence of fraud. It is at the present time a recognized legal term found in many court decisions and also in the Federal and many State statutes.

The phrase, similar in meaning, used in England is "Passing Off" and the phrase used in France is "Concurrence DeLoyale."

The terms monopoly and "unfair competition" are not mutually exclusive in their connotation. Both designate practices which tend to restrain trade; one directly and the other at least indirectly.

Monopolies existed in ancient times and increased during the middle ages. Tyre and Sidon maintained exclusive trade

1. In 21 James I, Chapter 3, Monopoly is defined as "The privilege of the sole buying, selling, making, working, or using anything within this realm." English Ruling Cases, Vol. XX, p. 37.

2. Nims on "UNfair Methods of Competition" p. 12.

privileges, and corners on grain were common in Greece and Rome.¹

Mediaeval towns and national governments often passed laws against forestalling, regrating, and engrossing of commodities of all kinds.²

The Elizabethan period in England is notorious because of the existing monopolies; most of these were grants by the crown to her favorites. These monopolies were very obnoxious to the people and were held illegal at common law. No terms too severe could be used in their condemnation.³

Another practice in England which tended toward monopoly and was therefore contrary to the common law was the making of contracts in restraint of trade. A contract in restraint of trade was a contract, voluntarily entered into, which placed a restraint upon a person's natural right to engage in his trade or profession. Such a contract was void as against public policy. In those days a man could not lawfully carry on a trade until he had served a long period as an apprentice, and when once admitted to a trade he was by the law compelled to follow such a trade. Therefore if a party made a contract not to carry on the trade in which he was skilled he became a burden to the State and also indirectly furthered monopoly by reducing competition. Both were considered as tending to the prejudice of the public.⁴

At the present time the term "restraint of trade" has a much broader meaning. Chief Justice White in the opinion of the Supreme Court in the Standard Oil Case said: "It is also true that while the principles concerning contracts in restraint of trade, that is, voluntary restraint put by a person on his right to pursue his calling, hence only operating subjectively, came generally to be

1. LeRossignal, "Monopolies Past and Present" pp. 25 ff.

2. Ibid., p. 30. 3. H. DeB Gibbins, "Industry in England" p. 242. Vide Darcy v. Allen, 11 Coke 84. 4. Ruling Case Law, Vol. 6, Contracts 190; 24 L.R.A. N.S. 913, Note.

recognized in accordance with the English rule, it came moreover to pass that contracts or acts which it was considered had a monopolistic tendency, especially those which were thought to unduly diminish competition and hence to enhance prices---in other words, to monopolize---came also in a generic sense to be spoken of and treated as they had been in England, as restricting the due course of trade, and therefore as being in restraint of trade."¹

Legislation and Litigation prior to 1891. Prior to the enactment of the anti-trust law of 1891 there were few statutory provisions regulating monopolies and other forms of restraint of trade in either commerce or manufacturing in the State of Illinois. Actions against the various forms and methods of restraint of trade were common law actions.

The constitution of 1848 contained no provisions directly on the subject. The clause of the constitution providing that corporations, not possessing banking powers or privileges might be formed under general laws, but should not be created by special acts, except for municipal purposes, and in cases where, in the judgment of the General Assembly, the object of the corporation could not be attained under the general laws was wholly disregarded, and many corporations possessing exclusive privileges were created by special legislation.²

In *Johnson v. Joliet and Chicago Railroad Company*, the Supreme Court of the State held in answer to objection made on the ground of Article 10, Section 1, of the constitution of 1848: "It is too late now to make this objection, since, by the action of the General Assembly under this clause, special acts have been so long the order of the day, and the ruling passion with every legislature

1. 221 U.S. 1, per Davies "Trust Laws and Unfair Competition" p. 6.

2. Constitution of 1848, Article 10, Sec. 1.

which has convened under the constitution, until their acts of this description fill a huge and misshapen volume, and important and valuable rights claimed under them. The clause has been wholly disregarded, and it would now produce far-spread ruin, to declare such acts unconstitutional and void. It is now safer, and more just to all parties, to declare,---that ---its object could not be attained under the general law,---."1

In the constitutional convention of 1870, resolutions were made declaring monopolies odious and contrary to the spirit of a free government and that they ought not to be suffered.² In connection with the discussion on warehousing monopolies in the grain business were severely condemned.³

Under the subject of "Special Legislation Prohibited," the present constitution contains the following clause: "Granting to any corporation, association or individual any special or exclusive privilege, immunity or franchise whatever is prohibited."⁴

The second General Assembly meeting under the new constitution passed a general conspiracy act which among other things declares practices in restraint of trade and competition criminal. The act is in part as follows: "Section 46. If any two or more persons conspire and agree together, with the fraudulent or malicious intent ----to injure the --- business or property of another, or to obtain money or other property by false pretenses, or to do any illegal act, injurious to the public trade, ----- or to prevent competition in the letting of any contract by the State or the authorities of any county, city, town or village, or to induce any person not to enter such competition,-----they shall be deemed

1. 23 Ill. 124, (1859). 2. Debates of the Constitutional Convention, 1870, p. 321. 3. Vide Supra p. 9.

4. Constitution of 1870, Article 3, Section 22.

guilty of conspiracy; ---."1 This act did not set aside the common law with respect to criminal conspiracy.²

The more common practices in restraint of trade which were found objectionable during the period preceeding 1891 were monopolizing and cornering the market. Exclusive dealing contracts existed to some degree, but the various forms of unfair competition as they exist today were not considered objectionable or had not yet made their appearance.

Monopolizing the market has always been considered criminal in this country. One of the earlier leading cases in which such monopolization was declared criminal at common law was *Craft v. McConoughy*, decided in 1874. The litigants in this case were the grain dealers, four in number, of Rochelle, Ogle County, Ill. These dealers had agreed to enter the grain trade in Rochelle upon the following terms: "Our several grain houses shall be put into the business upon the basis of 27 shares as the aggregate, ----- Each separate firm shall conduct their own houses as heretofore, as though there was no partnership in appearance, keep their own accounts, pay their own expenses, ship their own grain, ---and at the end of every month, each individual's account to be balanced, showing the profit or loss, which amount is to be divided pro rata, according to the number of shares held by each party. It is further agreed, that there shall be no grain held for advance in price, or

1. Revised Statutes of Illinois 1874, Section on Conspiracy No. 46, p. 358. 2. *Sanford v. People*, 121 Ill. App. 619, (1905).

The same legislature which passed the general conspiracy act passed an act making it a criminal offense to counterfeit brands and trade marks which belonged to others because of long usage. Any peculiar name, letters, marks, device or figures, cut, stamped or engraved upon or in any way connected with any manufactured article were protected under this act. Any one using such marks, without the consent of the owner, for the purpose of falsely representing any article was subject to fine. Revised Statutes of Illinois 1874, p. 369.

This act is found in the criminal code of the Revised Statutes

for any other cause,---.

"Prices and grades to be fixed from time to time, as convenient, and each one to abide by them. All grain taken in store shall be charged one and one-half cents per bushel monthly-----. No grain to be shipped by any party at less than two cents per bushel."

A bill in equity was brought by J. O. McConoughy against the other members of the partnership for a distribution of the profits. The court held: "The four firms, by a shrewd, deep laid, secret combination, attempted to control and monopolize the entire grain trade of the town and surrounding country. That the effect of this contract was to restrain the trade and commerce of the county, is a proposition that cannot be successfully denied. We understand that it is a well settled rule of law, that an agreement in general restraint of trade, is contrary to public policy, illegal and void-----. But an agreement in partial or particular restraint of trade has been held good, where the restraint was only partial, consideration adequate, and the restriction reasonable."¹

Combinations having for their object the raising of the prices of prime necessities of life have been held criminal at common law in this State at various times.²

at the present time. Revised Statutes, Chapter 38, Sections 115 and 116. An act of 1891 relative to labels and trade marks provides for the protection of the same through registration. Laws of Illinois 1891, pp. 202 ff., Vide White v. Wagar, 185 Ill. 195.

The general conspiracy act was amended in 1887, making the practice called "boycott" conspiracy. Laws of Ill. 1887, p. 167.

1. 79 Ill. 346, (1875). As to courts of equity and divisions of profits of an illegal transaction between associates the court cited : 58 Ill. 172; 54 Ill. 309; 66 Ill. 452.

2. In Samuels v. Oliver, the court held: "The enhancement of the price of an article of prime necessity, such as wheat, or other article, for purposes of extortion, is against public policy. And a combination or agreement to make a 'corner' on stock or grain

One of the first cases in which a holding corporation, formed for the purpose of monopoly, was declared illegal in this State was *People v. Chicago Gas Trust*.¹ In this case the Supreme Court very forcibly stated its opinion relative to monopolies of public service utilities by private corporations. The charter of the Chicago Gas Trust Company, originally granted in 1849, conferred upon the corporation the power to manufacture gas and to purchase and hold stock in other gas and electric companies in Chicago and elsewhere in the State of Illinois. The court in this case said in part: "What ever tends to prevent competition between those engaged in a public employment, or business impressed with a public character, is opposed to public policy and, therefore, unlawful. What ever tends to create a monopoly is unlawful as being contrary to public policy."

"If contracts and grants, whose tendency is to create monopolies are void at common law, then where a corporation is organized under a general statute, a provision in the declaration of its corporate purposes, the necessary effect of which is the creation of a monopoly, will also be void."

"By Chapter 28 of our Revised Statutes it is provided that 'the common law of England so far as the same is applicable and of a general nature ---- shall be the rule of decision and shall be considered of full force until repealed by legislative authority.' Public policy is that principle of the law which holds, that no subject or citizen can lawfully do that which has a tendency to be injurious to the public, or against the public good. This principle ----- by buying it up, so as to control the market, and then purchasing for future delivery, is illegal -----." 130 Ill. 73, (1889).

In *Cummings v. Foss* it was held: "Combinations having for their object the enhancement of the price of articles of prime necessity, as food, for purposes of extortion, are against public policy and void." 40 Ill. App. 523. 1. 130 Ill. 268, (1889).

owes its existence to the very sources from which the common law is supplied."¹ The court held that the granting of a charter for the purpose of purchasing and holding stock in competing companies was contrary to the public policy of the State and in contravention of the spirit if not the letter of the constitution.

Contracts having for their object "exclusive dealings" have been held valid at common law unless such contracts tended to unreasonably restrain trade. A certain Hanson and others entered into an agreement with a certain Rounsavell according to which the latter granted to the former the right to purchase from him the AEtina sewing machine for the purpose of selling them in Cook county. It was further agreed that Hanson and his partners were to deal exclusively in the AEtina sewing machines. In a suit brought by Rounsavell against Hanson, who had failed to pay for the machines, it was objected that the contract was void for being in restraint of trade. The Supreme Court of the State said that it saw nothing in such a contract so in restraint of trade as to make it against public policy and hence void.²

Contracts not to engage in a business or to practice a profession within certain limits of time and place (the original contract in restraint of trade) have been held valid at common law unless the restricted territory or period of time was greater than was necessary to protect the purchaser of the good will. The restricting part of the contract in order to be valid at common law must also be ancillary to a main consideration.³

1. In the brief for appellants the following appears: "Trusts of this character, to hold a controlling interest in the shares of stock in other competing corporations, constitute one of the most insidious and dangerous schemes to secure and perpetuate monopolies ever invented." Cook on Trusts, pp. 28 ff.

2. Brown v. Rounsavell, 78 Ill. 589, (1875). The contract was entered into in 1871. 3. In Stewart v. Challacombe it was held

An interesting case involving an "Unfair Method of Competition" was decided by the Appellate Court in 1884. The case involved defamation or misrepresentation of competitor. The plaintiff and defendant in this case had formed a partnership as commission merchants and located at 118 S. Water St. Chicago. Six months after such formation the plaintiff purchased defendant's interest in the business, property, and the good will of the firm. The defendant again started in the business as commission merchant and sent cards to consignors and shippers who had dealt or might deal with plaintiff which read as follows:

"Dear Sir: I drop you a line to let you know A.M. Hays, my successor in business, is not legally responsible for his contracts, as he is yet a minor, under twenty-one years of age. A word to the wise is sufficient. Store, No. 118 South Water St., I shall occupy and do business. Would be pleased to hear from you."

The court held that the above was defamatory or reasonably susceptible of a defamatory meaning even though the plaintiff was a minor.¹

The above are some of the more important cases in which the common law rules relative to monopolies and other forms of restraint of trade are set forth.

that a contract not to engage in business in a certain place is enforceable in law and equity. 11 Ill. App. 379, (1882).

In Linn v. Sigsbee it was held that "where one practicing physician sold to another a house and lot and in the same contract, included in the sale his practice and obligated himself not to attempt to establish a medical practice in the township where the property sold was located,----that such partial restraint of trade was reasonable." 67 Ill. 75, (1873). Vide Frazer v. Frazer Lubricator Company, 18 Ill. App. 450, (1886). Talcott v. Brackett, 5 Ill. App. 60, (1879).

1. Hays v. Mather, 15 Ill. App. 30, (1884).

2. Anti-trust Legislation of 1891. The increase in the number of large-scale business units, trusts, and combinations of various kinds, together with the investigations made in this field under the direction of Congress during the late eighties and early ninties, made the demand for statutory regulation of monopolies and conspiracies in restraint of trade more imperative.¹

Although such monopolies and conspiracies were held criminal and against public policy at common law, the common law remedies were no longer considered adequate in dealing with them for the reason that in many cases it could not be definitely proved that the alleged monopolies were such in fact and hence against public policy. Clearly stated rules were necessary. As expressed by Professor Jenks: "The statutes, by defining in specific terms --- what is the act objected to, put people and prosecuting officers more on the alert regarding their rights and duties. It is probable, too, that through the statutes the principles of the common law are fitted more rapidly into modern conditions and that they have been somewhat extended."²

Three well defined waves of anti-trust agitation and legislation are said to have passed over the United States: the first period including the years 1889 to 1893 inclusive; the second those from 1895 to 1898; and the third those from 1907 to 1913.³ Illinois was among the States passing anti-trust legislation during the first period.

In 1889, two bills were introduced into the State Senate having for their object the prohibition of restrictions on trade by

1. Report of the United States Industrial Commission, Vol. 2, p. 3.

2. Ibid., pp. 7-8. 3. During this period six States placed anti-trust provisions in their constitutions and twenty passed anti-trust statutes. Unpublished Manuscript by Professor Maurice Henry Robinson, University of Illinois.

the formation of trusts and trust companies. Both bills passed only the first reading.¹ During the same session the "Merritt Trust Bill" was passed by the House by a vote of 113 to 19. Motion in the Senate to take up this bill for consideration failed to secure the necessary two-thirds vote.²

During the following legislative session, 1891, two anti-trust bills were introduced into the House and two into the Senate. Neither of the Senate bills came to a vote, both being unfavorably reported back by the committee. One of the House bills was likewise reported back unfavorably, but the other House bill was amended by the committee on Judiciary and reported back with the recommendations that the amendments be adopted and the bill passed. The bill was passed in the House by a vote of 131 to 4, and in the Senate by a vote of 44 to 1. This bill as passed became the first act in the State of Illinois declaring trusts and combines in restraint of trade illegal and void. The almost unanimous vote by which the bill was passed in both Houses would indicate the attitude of the people of the State toward such combinations and trusts as the act was designed to prohibit.³

The act applies to all industries alike; extractive, manufacturing, and mercantile. Under it any agreement, trust or combination either of individuals, firms or corporations existing for the purpose of regulating or fixing the price of any article of merchandise or for fixing or limiting the quantity of any article produced is declared a conspiracy to defraud and made punishable. It is likewise declared unlawful for any corporation to issue or own trust certificates or for any corporation or its representatives to enter into any combination with any other corporation or its

1. Senate Journal, 1889, pp. 264, 265. 2. House Journal, 1889, p. 93; Chicago Tribune, May 24, 1889. 3. Senate Journal 1891,

representatives with the object of centralizing the management and fixing the price or limiting the production of any article of commerce. All contracts made in violation of the act are declared void, and any purchaser of any commodity from any such illegal combination may plead the act as a defense to any suit for the recovery of the price of the article purchased.¹

The purpose of the act is not to repeal the general conspiracy act of the State or set aside the common law, but to make it easier to prosecute all parties guilty of practices which tend to materially lessen competition.

The first important case to arise under the act was Ford v. Chicago Milk Shippers Association. In February 1891, four months previous to the enactment of the anti-trust law, shippers of milk had formed a corporation for the purpose of regulating the quantity and fixing the price of milk to be shipped and sold within the corporate limits of the city of Chicago to the city dealers. A one Ford, a retail milk dealer, purchased large quantities of milk from the organization and later refused to pay for the milk on the grounds that the Chicago Milk Shippers Association was a combination in violation of the act of 1891. The Milk Shippers Association brought action against Ford for the recovery of the price of the milk. The Appellate Court declared the act of 1891 unconstitutional on the grounds that it was in violation of the constitutional clause "that no law impairing the obligations of contracts shall be passed." The case was thereupon appealed to the Supreme Court of the State. This court held the Act constitutional and declared it to apply to corporations formed previous to its passage. The

pp. 11, 310, 726, 992, 993. House Journal 1891, pp. 49, 604, 943-4, 860. A Mr. Ferns introduced the bill which became the law.

1. "Where there is a conviction under this act the informer shall be entitled to one-fifth of the fine recovered." Laws of Ill.,

Appellate Court's decision was thus reversed and the constitutionality of the act has not been seriously questioned since.¹

The legislature of 1893 made an amendment to the act of 1891 and also passed a new anti-trust act.² The new act, in addition to the general provisions of the act of 1891, contained a section providing that the act should not extend to agricultural products or live stock while in the hands of the producer or raiser.³ The constitutionality of this act was not construed until 1902 in Connolly v. Union Sewer Pipe Company.⁴ This case was carried from the Federal Circuit Court for the Northern District of Illinois to the United States Supreme Court.

The Union Sewer Pipe Company of Ohio brought its action against Thos. Connolly, a citizen of Illinois, to recover on two promissory notes. The notes were given on account of the purchase of sewer pipe by Connolly from the pipe company. Connolly made the defense that the pipe company was a combination in restraint of trade contrary to the common law, contrary to the Federal Act of 1890, and also contrary to the Illinois statute of 1893. The Federal Circuit Court declared the Illinois Anti-trust Law of 1893 in violation of the constitution of the United States because of the provision of section 9, exempting agricultural products and live stock, while in the hands of the producer, from the provisions of the act. The court held that the principle of classification used

1891, pp. 206 ff.

1. 155 Ill. 166, (1895). Vide Constitution of Illinois, 1870, Section 14, Article 2. 2. The amendment made it the duty of the Secretary of State to require an annual report from all corporations in the State. Laws of Illinois 1893, pp. 89 ff. The act in force at the present time requiring corporations to make annual reports to the Secretary of State is the act of 1901, amended in 1903. The act of 1901 repealed an act of 1899. Ibid., 1899, pp. 111 ff., Ibid., 1901, pp. 124 ff., Ibid., 1903, pp. 123 ff. 3. Ibid., 1893, Section 9, pp. 182 ff. 4. Connolly v. Union Sewer Pipe Company, 184 U.S. 540, (1902).

in distinguishing between agriculturalists and others was not obvious and hence the "equal protection of the law" clause of the Constitution of the United States was violated. The United States Supreme Court reviewed the case and sustained the decision of the lower Federal court.

The legislature in 1897 again amended the anti-trust act of 1891 by adding to section one the proviso "That in the mining, manufacture, or production of articles of merchandise, the cost of which is mainly made up of wages, it shall not be unlawful for persons, firms, or corporations doing business in this State to enter into joint arrangement of any sort, the principle object or effect of which is to maintain or increase wages."¹ In a case arising under the act, as amended, the Supreme Court of the State, following the decision in the Connolly case, declared the amendment unconstitutional and void, as being an unlawful discrimination in favor of certain persons or corporations sought to be exempted from the operations of the law of 1891.²

The anti-trust law of 1891 is thus, with a few unimportant amendments, the anti-trust law of the State of Illinois at the present time. Since its enactment trusts and combines in restraint of trade have been consistently declared illegal either under the statute or the common law or under both.

One of the first important cases to arise under the act was decided in 1895. In 1887, a number of Illinois, Missouri, and Ohio corporations, engaged in the distillery business, entered into a trust agreement, vesting the management of the corporations in the hands of nine trustees. These trustees completely controlled

1. Laws of Illinois, 1897, p. 298. This amendment of 1897 was made before the new trust act of 1893 had been declared unconstitutional in *Connolly v. Union Sewer Pipe Co.*

2. *People v. Butler St. Foundry*, 201 Ill. 236, (1903). The court

all the constituent companies. In the information filed against the company it was shown that within a year after the formation of the trust eighty-one companies located in different parts of the United States had been absorbed. The Supreme Court of the State held that a trust agreement entered into for the purpose of securing control of a manufactured product, so as to limit its production and fix its prices was void as against public policy. The court further declared that no corporation could legally acquire the plants of other competing companies, by purchase or otherwise, if the purpose of such acquisition was the establishment of a monopoly. It was considered such an abuse of corporate powers as to warrant forfeiture of its corporate franchise. It was held that the corporation was limited in its holdings of property to that necessary for carrying out the particular business to conduct which the corporation was organized. The above was a Quo Warranto proceeding and the corporation was released of its corporate franchise.¹

In *Bishop v. American Preservers' Company*, the Illinois Supreme Court held that "an agreement is against public policy and void where all the interests of a business are thereby combined and placed absolutely under a single management to monopolize and control trade."² (157 Ill. 284).

In 1897 one New Jersey and three Illinois corporations, manufacturers of glucose products, endeavored to effect a consolidation. Before the combination was completed, suit was brought by one Harding, a stockholder in one of the constituent companies on behalf of himself and some of the other stockholders to enjoin the directors of the American Glucose Company from entering into

in this case clearly stated that the act of 1891 was not repealed by the anti-trust act of 1893 and that its validity was not affected by the fact that the whole act of 1893 was declared void.

1. *Distilling and Cattle Feeding Co. v. People*, 156 Ill. 448, 1895.

and becoming a part of the consolidation or trust about to be formed. The decision of the court was very similar to that in the Distilling and Cattle Feeding Co. v. People. Although the combination was effected while the litigation was pending, the Illinois Supreme Court annulled the agreement. The court held that a minority stockholder might restrain a corporation from becoming a part of an illegal combination where the formation of such combination would be cause for forfeiture of its charter and would pecuniarily injure the minority stockholder.¹

In Chicago, Wilmington and Vermillion Coal Co. v. People, the court held that a combination of producers of coal to prevent competition in its sale was detrimental to the public, unlawful and amounted to a common law conspiracy.²

In Purington v. Hinchliff, the court held: "No person or combination of persons can legally, by direct or indirect means, obstruct or interfere with another in the conduct of his lawful business, and any loss wilfully caused by such interference will give the party injured a right of action for all damages sustained."³

A case involving a combination of workmen for the purpose of monopolizing the market and raising the wages of the members of the association was decided in 1892. The members of the Stenographic Association of Chicago entered into an agreement by which the

1. Harding v. American Glucose Company, 182 Ill. 551, (1899).

2. 214 Ill. 421.

3. 219 Ill. 159, (1905). It was agreed among the Bricklayers' Association at the instigation of the Brick Manufacturers' Union that their members should not purchase any brick to be used by them from any person or corporation except such as had subscribed to the rules and regulations of their association.

In Dunbar v. American Telephone and Telegraph Co., part of the decision of the court as summed up in the syllabus is as follows:

"There is no provision of the general incorporation act authorizing one corporation to purchase and hold stock in another corporation, and there is no implied power to do so except where it is necessary to carry into effect the object for which such corporation was formed.

prices of reporting legal proceedings by shorthand were to be kept up through the prevention of competition. Action was brought by a certain More and other members of the association against a one Bennett and others to recover damages resulting from an alleged breach of the rules of the association. The court held that the agreement among the stenographers was not a valid contract for the reason that it tended to prevent a free and unrestricted competition in the business.¹

"Where a controlling interest in a corporation has been purchased by another corporation for the purpose of stifling competition, the minority stockholders in the former corporation may have the sale set aside in equity and may compel the stock to be returned to the rightful owners upon equitable terms, and their right to relief is not limited to enjoining the purchasing corporation from voting the stock and from exercising or enjoying the other rights of a stockholder." 238 Ill. 456, (1909).

1. More v. Bennett, 140 Ill. 69, (1892). Professor W. Z. Ripley in commenting on this case states: "It is interesting to note that the court refused to countenance the attempt to regulate the price of labor as well as to refuse to permit the regulation of prices of commodities." "Trusts, Pools, and Corporations" p. 234.

Vide, People v. Aashen and Munich Fire Ins. Co., 126 Ill. App. 636.

3. Unfair Methods of Competition. Introduction. The growth of unfair methods of competition has been commensurate with the increase in large-scale business units, the ingenuity of the unfair competitor, and interstate commerce, and hence the suppression or regulation of these methods depends as much upon the action of the National Government as upon the action of the State Governments.

In the State of Illinois very little legislation has been passed having for its object the suppression of these methods, and the phrase "Unfair Competition" is not found in the statutes of the State.

In 1891, an act was passed for the protection of associations and labor unions in the use of trade marks adopted by them. The counterfeiting or imitation of such labels or trade-marks was made a punishable offense.¹ Four years later an amendment was made to the act providing for the registration with the Secretary of State of such marks.²

Sensational, false and misleading advertising of any kind in newspapers or otherwise was made a criminal offense by an act of 1897.³ This act was supplemented by an act passed in 1915.

Fraud and misrepresentation in the sale of articles made in whole or in part of silver or gold is also declared a criminal offense. All articles marked "Sterling" or "Sterling Silver" must

1. Laws of Illinois, 1891, pp. 202 ff. 2. Ibid., 1895, pp. 319 ff. For a classification of Methods of Competition in business called "Unfair" see Davies "Trust Laws and Unfair Competition," p. 311.

3. Laws of Illinois, 1897, pp. 204 ff. The General Incorporation Act of the State provides that "no license shall be issued to two companies having the same or a similar name, nor shall any foreign corporation having the same or a similar name as any domestic corporation be admitted to this State under any foreign corporation law and no domestic corporation shall hereafter be organized with the same or a similar name as any foreign corporation previously admitted to do business in this State." Ibid., 1905, p. 130. Revised Statutes of Illinois, 1916, p. 637, Section 2.

In 1901, an act was passed for the purpose of preventing the unlawful buying and selling of cans, tubs, firkins, bottles and

be 925/1000 fine. All articles marked "Coin" or "Coin Silver" must be not less than 9/10 fine.¹

Outside of the above acts and the laws on pure foods, which indirectly prohibit and prevent unfair methods of competition, no statutory regulations on the subject exist in the State.

Many methods of unfair competition have, however, been declared illegal at common law or in contravention of the anti-trust act of 1891 because tending toward monopoly or undue restraint of trade.

Exclusive Dealing Contracts. Contracts calling for exclusive dealing or so-called tying contracts have been held invalid, if not criminal, in Illinois if entered into by public service corporations, but have been considered valid if entered into by private individuals or corporations provided the agreement is reasonable and not unduly in restraint of trade.

In *Inter Ocean Company v. Associated Press*, the Supreme Court of the State declared a tying contract illegal and contrary to public policy because of the quasi-public character of the Associated Press.² This company, a corporation organized under the laws of the State of Illinois in 1892, was created to "buy, gather, and accumulate information and news; to vend, supply, distribute and publish the same; to purchase, erect, lease, operate and sell telegraph and telephone lines and other means of transmitting news." The stockholders of the association were proprietors of news papers. Article 11, Section 8, of the by-laws of the corporation provided:

"No member shall furnish, or permit any one to furnish, its special

others containers and to provide for the registration of the names, brands, designs, and marks of ownership in connection with such articles. This act was declared unconstitutional on the grounds of being discriminatory. Laws of Illinois, 1901, pp. 316 ff. *Horwich v. Walker*, 205 Ill. 497. 1. Laws of Ill., 1899, pp. 138 ff. 2. 184 Ill. 438, (1900).

or other news to, or shall receive news from, any person, firm or corporation which shall have been declared by the Board of Directors or the stockholders to be antagonistic to the association; and no member shall furnish to any other person, firm or corporation engaged in the business of collecting or transmitting news, except with the written consent of the Board of Directors."

The Associated Press entered into an agreement with the Inter-Ocean Publishing Company to furnish it news. The latter violated its agreement with the Associated Press by purchasing news from other sources, whereupon the Associated Press threatened to cease furnishing the Publishing Company with news. The Publishing Company then filed a bill for an injunction against the Associated Press. The Circuit Court of Cook County and the Appellate Court both dismissed the bill. The State Supreme Court, however, held that the lower courts had erred in so doing and said in part as follows: "The clause of the contract in this case which sought to restrict appellant from obtaining news from other sources than from appellee is an attempt at restriction upon the trade and business among the citizens of a common country. Competition can never be held hostile to public interest, and efforts to prevent competition by contract or otherwise can never be looked upon with favor by the court----."

In *Wieboldt v. Standard Fashion Company*, the Appellate Court held that a contract entered into between the parties in which it was agreed that the Fashion Company grant to Wieboldt the

In 1901, a contract was entered into whereby the owner of a bed of fire clay agreed to erect a plant, experienced fire clay miners agreed to run it and several corporations agreed to take a specified amount of the product daily at a fixed price; the first party agreed not to operate a fire clay plant on any other land owned or controlled by him in the State, the second party agreed not to sell fire clay to any other parties than the corporations specified, and the latter agreed not to buy any fire clay in the State except that

exclusive agency for the sale of its patterns within a certain district of Chicago was not invalid as being in restraint of trade.¹

In *Heimbuecher v. Goff, Horner and Company*, the court said relative to a contract by which one corporation bound itself to buy all its raw materials from and sell all its manufactured products to another corporation: "We do not regard this contract as one in restraint of trade and, therefore, illegal and void. Nor do we think it is forbidden by the anti-trust law of this State, or by the Sherman Act.---"2

Cases involving exclusive dealing contracts, decided by the Federal courts, are usually complicated by patent rights and copyrights. Such contracts have been held not to contravene the -----
produced by the second parties and not to enter into any combination or trust to limit the output of the plant. The contract was for a term of eight years. In a case involving this contract the court held that the contract was not invalid as being in restraint of trade. *Southern Brick Co. v. Sand Co.*, 223 Ill. 616, (1906).

A contract was entered into between the Superior Coal Company and the Darlington Lumber Company, whereby it was agreed that if the Lumber Company, a retail dealer, would buy coal of the mining company, the latter would not sell coal at wholesale prices to any other dealer in that town. The Superior Coal Company sued for the price of a quantity of coal which the defendant refused to pay on the grounds that the contract was void as being in restraint of trade.

The court held that the contract was not invalid as contrary to public policy or in restraint of trade even though it might incidentally restrict competition in the sale of coal in the town. *Superior Coal Company v. Lumber Company*, 236 Ill. 83, (1908).

The Local Telephone Company of Vandalia entered into a contract with the Kinloch Long Distance Telephone Company whereby it was agreed that the local company should not connect or make connections with any other telephone company for long distance service.

The court held that "the ordinary rule that contracts in partial restraint of trade are not invalid does not apply to public service corporations." The court further stated: "The rule that at common law contracts in general restraint of trade are illegal and void is well settled, but agreements in partial restraint of trade, only, may be good under certain circumstances if reasonable in their nature and made upon a sufficient consideration." *Union Trust and Savings Bank v. Telephone Company*, 258 Ill. 202, 1913.

1. 80 Ill. App. 67, (1898).

2. 119 Ill. App. 373, (1905).

Sherman Act. The two leading cases setting forth this view are the well known "Button Fastener" case, decided in 1896, and the "Mimeograph" case, decided in 1912. It was held in both of these cases that, although a contract involving the use of a patent interfered with interstate commerce and restrained interstate trade, if it involved only the reasonable and legal conditions imposed under the patent law, it was not within the prohibition of the Sherman Act.¹

Since the passage of the Clayton Act, however, a number of decisions have been made by the Federal courts declaring "tying contracts" in restraint of trade illegal even though valuable patent rights were involved.²

1. In Heaton-Peninsular Button-Fastener Company v. Eureka Specialty Company it was held that the owner of a patent for a machine for fastening buttons to shoes with metallic fasteners had the right to sell such machines subject to the conditions that they should be used only with the particular fasteners made by the manufacturer of the machine. The fact that the fasteners were not patented was held not to prevent the manufacturer from selling the machines under such conditions. 77 Federal Reporter 288, 1896.

The A. B. Dick Company, manufacturers of the "Roatry Mimeograph" sold their machines, well protected by patents, on the condition that the purchaser use only the supplies with the machines made by the A. B. Dick Company.

In a case involving alleged contributory infringement of the Dick patents the court held that the sale of ink not manufactured by the Dick Company to a user of a rotary mimeograph with a knowledge that it would be used with the mimeograph was contributory infringement and that the use of such ink was also an infringement. The court further stated that the owner of a patented article had the exclusive right to make, use, and sell the article. He might refuse to sell it or sell it conditionally. 224 U.S. 1, (1912).

2. Clayton Act. Section 3. "That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, ---- whether patented or not, for use---- or resale within the United States, --- or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, -----that the lessee or purchaser thereof shall not use or deal in the goods, ---- supplies or other commodities of a competitor of the lessor or buyer, where the effect of such lease, sale, or contract for sale or such condition ----- may be to substantially lessen competition or tend to create a monopoly-----." United States Statutes, 1913-14, Pt. 1, p. 731.

One of the first important cases involving both a "tying contract" scheme and patent rights decided after the passage of the Clayton Act was *United States v. Keystone Watch Case Company*.¹ The Keystone Watch Case Company which had acquired the plants of a number of manufacturers of filled watch cases and watch movements issued to a large number of jobbers a circular stating that thereafter it would sell its products only to those dealers who voluntarily conformed to its plans. The circular among other things stated:

"First. Our goods bearing the following trade-marks, to wit,---- will be sold by us to our jobbers at fixed prices,----- and we desire that sales of these goods by jobbers, whether to retailers or jobbers, shall be without deviation at the prices fixed by us for sales to retailers,-----.

"Fourth. And, further, we desire that the jobbers to whom we sell our goods bearing the following trade-marks, to wit,--- shall not deal in any other watch cases other than those manufactured by us."

The Watch Case Company then proceeded to strictly enforce its scheme. Half of the jobbers disregarded the rules of the company and failed to receive any more watch cases. In a case brought against the Watch Case Company a lower Federal court held that its proposed policy was a direct and unlawful restraint of trade; that when the company sold the watch to the jobber it had fully exercised its right to vend, and had no right to control subsequent purchasers.²

In *Victor Talking Machine Company v. Strauss* the court held that the manufacturer of a patented article might give the right to use such article to whom it pleased and upon what conditions it pleased. But in this case no sale was involved. The

1. 218 Fed. 502, (1915). 2. By a mere notice on the box the company attempted to control the retail price of the watches.

Victor Talking Machine Company leases its machines under a royalty scheme. The lessee upon the payment of the royalty has the use of the machine only until the patent which has the longest time to run has expired. Thereafter the lessee automatically becomes the owner of the instrument. The license states that the machine shall remain unchanged and be used only with the needles, records and other supplies furnished by the company.¹

Two very recent cases in which "tying contracts" have been held illegal are United States v. United Shoe Machinery Company and Motion Picture Patent Company v. Universal Film Manufacturing Company.² The United Shoe Machinery Company is probably one of the best known corporations in the United States which sells its goods under exclusive dealing contracts. One of the most objectionable clauses in its contracts is that the user of a machine from the company is prohibited from using any shoe manufacturing machine from any other company.

The lower Federal court shows clearly that the company's contracts are in violation of Section 3, of the Clayton Act, and every objection made by the defendant was overruled.³

The Motion Picture Patent Company, manufacturers of picture projecting machines, sold its machines on the conditions that they should be used only with films of its own manufacture, although its patents on the films had long ago expired. The court held the company's contracts invalid as tending to create a monopoly.

This case differs from the Victor Talking Machine case in two points. The Victor Talking Machine Company controlled one of many makes of talking machines and leased them under a royalty plan.

The Motion Picture Patent Company held a monopoly of picture pro-

1. 230 Fed. 449, (1916). 2. 234 Fed. 127; 235 Fed. 398, (1916).

3. The case is at present pending in the U.S. Supreme Court.

jecting machines and sold them conditionally. According to the court the conditions in the former case did not tend to substantially lessen competition or trade whereas the conditions in the latter case tended clearly to restrain trade and establish a monopoly, hence the Clayton Act was held violated.

Inducing Breach of Contract. Inducing breach of contract is held to be an unfair method of competition and hence an actionable offense. A leading case in the State of Illinois is *Doremus v. Hennessy*, decided in 1898. Appellee in this case had for a number of years conducted a laundry office in the city of Chicago. She received clothes, sent them to laundry plants where they were laundered and then returned to her to be distributed by her to her patrons. She alleged that for the reason that she would not increase her price so as to conform to the laundrymen's union scale the Chicago Laundrymen's Association had injured her business by compelling those who did her work to break their contracts with her. The court held: "An action will lie for damages resulting from inducing one to break a contract, if done without justifiable cause and with the intention of injuring the plaintiff.

"The common law seeks to protect every person against the wrongful acts of others, whether committed alone or by combination, and an action may be had for injuries done which cause another loss in the enjoyment of any right or privilege or property. ----- ."1

A more recent decision declaring the inducing of a breach of contract an actionable offense was made in *London Guarantee Company v. Horn*.² The court held that "Where a third party induces an employer to discharge his employee who is working under a contract terminable at will but under which the employment would have continued indefinitely except for such interference and where the

1. 176 Ill. 608; 1898. 2. 206 Ill. 493. 1904. *Allen v. Flood*,

only motive moving the third party is malice a cause of action lies against the third party."

Contracts in Restraint of Trade. Contracts in restraint of trade, using that term in its original meaning, have been held valid unless unreasonable as to time and area restricted to one or both of the parties to the contract. The restraint must also be subordinate or ancillary to a main important consideration.

In 1901, a one Reimers purchased all the property and machinery used in connection with a bottling works. The purchase also included the trade, good-will, and business of the former bottling works. The property was delivered and the name over the door was changed. Shortly afterwards the seller established a business of the same kind and adopted the old name, "A Rauft Bottling Works." She also directed the telephone company to install on her new premises the former telephone number and directed all mail addressed to "A Rauft Bottling Works" to be delivered to her. Reimers filed a bill praying for an injunction against Rauft to enjoin her from using the trade name, the telephone number, and from receiving the mail addressed to "A Rauft Bottling Works." The Circuit Court granted all the points asked for, whereupon the case was appealed to the Supreme Court of the State. The Supreme Court ruled that the decree was too broad. Among other things the court held: "It has been held that the right of a man to use his own name in connection with his own business is so fundamental that the intention to entirely divest himself of such right and transfer it to another will not readily be presumed but must be clearly shown. Where it is so shown the transaction will be upheld, but it will not be sustained upon doubtful or uncertain proof.

"In England it seems to be settled that the vendor of a
67 Law Journal, (Q.B.), 119. Lumley v. Gye, 22L.J. (Q.B.) 463.

good-will is not entitled to canvass customers and solicit them not to deal with the purchaser but to deal with the vendor. The vendor will be restrained from such conduct by injunction. In this country the authorities are not agreed. ----- In some States the seller may set up the same business in the same vicinity and canvass the customers of the house, with the effect of destroying the good-will. The English view, which we are inclined to regard as the more just and equitable, is adopted by other authorities."¹

In *Telford v. Smith* the court held: "A contract not to engage in a business, as an inducement to buy a business, is enforceable where the limitations as to place and time are specifically mentioned."²

The decisions of the Federal courts do not differ from those of the State courts. Reasonable restraint is held valid even though it has a tendency to lessen competition. Any restraint however which goes beyond what is necessary to protect the vendee in his purchase is held unreasonable and contrary to the Sherman Anti-Trust Act.

The retail dealers of South Dakota agreed among themselves not to handle the goods of jobbers or wholesalers who sold their goods to mail order houses. The retail dealers also kept each other informed as to the wholesalers and jobbers who sold to mail order houses. *Montgomery Ward and Company* brought suit against the Association of South Dakota Retailer and asked for an injunction enjoining the association to give up their agreement and cease informing each other as to the jobbers who sold to mail order houses.

1. 200 Ill. 386, (1902).

2. 186 Ill. App. 631, (1914). "An agreement not to engage in the manufacture or sale of a commodity within a certain territory, which is coextensive with the territory within which the raw material from which the commodity is made is grown, for a term of years, is in restraint of trade and void." 182 Ill. 551. 171 Ill. App. 433.

The court held: "It appears that the retailers have done nothing , nor threatened to do anything that is actionable. Retail dealers have a lawful right to agree among themselves that they will not purchase merchandise from wholesalers and jobbers who sell to mail order houses. They may also keep each other informed as to those jobbers and wholesalers who do and who do not sell to mail order houses."¹

Betrayal of Trade Secrets. Rules relative to the betrayal of trade secrets do not seem to be definitely established. The decisions both by State and Federal courts are made on the bases of the methods employed by the accused in obtaining the secrets and information from the plaintiff.

In *Loven v. People*, a case decided in this State in 1895, an injunction was sustained enjoining Loven from advertising in any manner the medicines of his former employer, Peter Fahrney. He was also enjoined from imitating the wrappers, using the name Fahrney, professing to know the ingredients of the Fahrney remedies or from in any way soliciting the trade of Fahrney's customers.²

In *American Insurance Company v. France*, the court held: "When an agent is under no contractual restraint, and no violation of business secrets reposed in him by reason of his agency is involved, he has the right, after the termination of his agency, to influence the policy holders of his former principal, to forfeit or transfer to other companies, their policies, whether such policies were the fruits of such agent's efforts while in his former employment, or otherwise,-----"³

1. *Montgomery Ward And Company v. South Dakota Retail Merchants' and Hardware Dealers' Association*, 150 Fed. 413, (1907).
Vide 208 Fed. 733; 227 U.S. 8.
2. 158 Ill. 159, (1895).
3. 111 Ill. App. 382, (1903).

Anti-Trading Stamp Legislation and Litigation. No anti-trading stamp laws have at any time been enacted in the State of Illinois, and, therefore, the recent decisions by the Federal courts involving the constitutionality of anti-trading stamp laws are of indirect interest only, in this State. Many such laws have, however, been passed during the last twenty years by a number of States with the object of regulating the trading stamp schemes or abolishing them altogether. These laws have been held null and void by both State and Federal courts until the year 1916. Some were held contrary to the "Due Process Clause," others to the "Equal Protection of The Law Clause" and many of these laws have been declared an unreasonable exercise of the police power of the State.¹

As early as 1873, Congress passed an act prohibiting any person from engaging in gift enterprises in the District of Columbia, and in 1897, gifts in connection with the sale of tobacco were prohibited throughout the United States.² The law provides in part as follows: "-----nor shall there be affixed to, or branded, stamped, marked, written, or printed upon, said packages, or their contents, any promise or offer of, or any order or certificate for any gift, prize, premium, payment, or reward.

"None of the packages of smoking tobacco and five-cent chewing tobacco and cigarettes prescribed by law shall be permitted to have packed in, or attached to, or connected with them, any article or thing, whatsoever, other than the manufacturers wrappers and labels, the internal revenue stamp and the tobacco or cigarettes respectively, put up therein, on which tax is required to be paid under the internal revenue laws."³

1. For above decisions see: 109 N .Y. 389, (1888). 74 Md. 565. 76 Vt. 197. 190 Fed. 682. 147 Cal. 763. 2. 17 Stat. 464, (1873). Rev. Stat. of the U.S. Sec. 3394. 3. 30 Stat. 206; 32 Stat. 714;

In 1913, the States of Florida and Washington enacted laws which were designed to abolish the trading stamp schemes in these States. The law of Florida provides for the payment of a \$500 State license tax and a \$250 county license tax by every merchant who "offers with merchandise ---- sold in the course of trade any coupon, profit sharing certificate, or other evidence of indebtedness or liability, redeemable in premiums,-----." ¹ The Washington law provides that any merchant issuing or in any way distributing gift or profit sharing coupons shall secure a license annually from the county auditor upon the payment of a fee of \$6,000. ²

It is apparent that the laws of both of these States are prohibitory. In the State of Florida suit was brought in the District Court of the United States to restrain the enforcement of the statute. ³ The suit was brought by Florida merchants against a county tax collector. The District Court enjoined the enforcement of the law whereupon the case was appealed to the United States Supreme Court. In the bill of the appellee it was alleged that the Florida statute was unconstitutional on the grounds that it violated the commerce clause, the due process clause, and the equal protection of the law clause. Two cases from the State of Washington, which had arisen under the anti-coupon and trading stamp laws of that State, were argued in the Supreme Court of the United States at the same time. One case, *Tanner v. Little*, was an appeal from the U.S. District Court and the other, *Pitney v. Washington*, was an appeal from the Supreme Court of the State of Washington. ⁴ In *Tanner v. Little*, the lower Federal court held the Washington statute

The above act was declared constitutional in *Felsenhead v. United States*, 186 U.S. 126.

1. Session Laws of Fla. 1913,

2. Session Laws of Washington, 1913, p. 413.

3. *Rast v. Van Deman and Lewis*, 240 U.S. 342, (1916).

4. 79 Wash. 608. 240 U.S. 369.

unconstitutional, whereas in the other case the State court upheld the Washington law. As the cases were argued together and the principles involved were similar, Chief Justice McKenna, after describing the various coupon schemes, rendered in part the following decision: "All of the schemes have a common character---something is given besides that which is or is supposed to be the immediate incentive to the transaction of sale and purchase, something of value given other than it, ----They are not designed for or executed through a sale of the 'original package' of importation but in the packages of retail----. This fixes their character as transactions within the State, and not as transactions in interstate commerce,--.

"Is it an illegal meddling with a lawful calling and a deprivation of freedom of contract? -----Appellees' contentions have the support of a number of cases. They are opposed by others, not nearly so numerous as the supporting cases but marking a change of opinion. Both sets of cases indicate by the statutes passed upon a persistent legislative effort against the schemes under review or some form of them, beginning in 1880 and repeated from time to time until the statute in controversy was passed in 1913. In such differences between the judicial and legislative opinion where should the choice be? That necessarily depends upon what reasoning judicial opinion was based. We appreciate the seriousness of the situation. Regarding the number of cases only, they constitute a body of authority from which there might well be hesitation to dissent except upon clear compulsion.

"The foundation of all of them is that the schemes detailed are based on an inviolable right, that they are but the exercise of a personal liberty secured by the constitution of the United States,----- But there may be partial or total dispute of the

propositions. Advertising is merely identification and description, apprising of quality and place. It has no other object than to draw attention to the article to be sold, and the acquisition of the article to be sold constitutes the only inducement to its purchase.

"The schemes of complainants have no such directness and effect. They rely upon something else than the article sold. They tempt by a promise of a value greater than that article and apparently not represented in its price, and it hence may be thought that thus by an appeal to cupidity lure to improvidence, This may not be called in an exact sense a 'lottery' may not be called 'gaming!' it may, however, be considered as having the seduction and evil of such,-----."1

The above decision is of interest, not so much for the fact that hereafter the constitutionality of anti-trading stamp laws will not be questioned, but for the reason that the court was sufficiently influenced by the legislation by a number of States, through a period of time, to render a decision in contravention to many former decisions. The decision has, however, been severely criticised for a number of reasons. The court's definition of the object of advertising has been considered faulty as being narrow. The purpose of modern advertising is regarded to be more than merely to call attention to the quality and place of sale of the goods. Advertising has a standardizing effect which involves far more than recognition of quality. The court's comparison of coupon schemes to 'lottery' systems has been regarded as unjustifiable. The anti-trading stamp laws also seem to savor of paternalism, but here the criticism belongs to the legislatures rather than to the court except in so far as the courts are able to protect freedom of contract against meddlesome and paternalistic laws enacted by

1. 240 U.S. 342.

legislative bodies.¹

Price-Cutting versus Price-Maintenance. The term price-cutting has not been clearly defined. The term as used in contrast to the phrase price-maintenance is generally employed to designate the practice of selling identified or advertised articles at a price lower than the one set by the manufacturer. Reductions in the prices of such articles are of various degrees and are made for various purposes. The reduction may be local or general; it may be temporary or permanent; and again it may be on identified goods only or on all goods handled by the dealer.

The reduction in price may be a permanent policy made possible by the superior efficiency of the individual, firm, or corporation handling the goods or it may be a temporary scheme for the purpose of driving out competitors with a view to recouping the losses after competition has been destroyed. Price cutting on identified or advertised goods may also be practiced for the purpose of leading the purchaser to believe that a similar reduction is being made by the firm or corporation on all the goods sold by it.

The difficulty in solving the problem is increased by the fact that many of the more objectionable forms of price-cutting are practiced by the large organizations engaged in interstate business.

At common law the resale price of articles of commerce cannot be fixed by contract, hence price reduction by the retailer, unless done for a malicious purpose, is legal. But with the increase in the methods of unfair competition, perfecting of the ingenuity of the dishonest trader, growth of large-scale industrial units, and the increase in the number of identified articles, certain forms of price-cutting have become very objectionable and destructive of competition and have therefore given rise to agitation

1. Vide Journal of Political Economy, Vol. 24, pp. 921 ff.

favoring legislation permitting price-maintenance contracts.

The committee on "Maintenance of Retail Prices" in 1916 made the following report to the Chamber of Commerce of the United States: "Your committee is convinced that legislation permitting the maintenance of resale prices under proper restrictions on identified merchandise, for voluntary purchase, made and sold under competitive conditions, would be to the best interest of the producer, the distributor and of the purchasing public, or consumer."¹ The committee also quoted with approval the opinion of Justice Holmes: "I cannot believe that in the long run the public will profit by this court permitting knaves to cut reasonable prices for some ulterior purpose of their own and thus to impair if not to destroy, the production and sale of articles which it is assumed to be desirable that the public should be able to get."²

Prior to 1908, it appears that the majority of authorities were on the side of those advocating price maintenance, but beginning with that year the attitude of the courts changes and it has been clearly stated in a number of important cases that prices may not be maintained by contract between manufacturer, wholesaler, and retailer. Hence price cutting is again legal as at common law. But this does not dispose of all forms of price-cutting, especially the so called "predatory price-cutting."

The following cases indicate the attitude of the courts toward price-maintenance both before and after 1908.

In Edison Phonograph Company v. Kaufman, a case decided

1. Report of Committee on "Maintenance of Resale Prices" to the Chamber of Commerce of the United States, 1916, pp. 3-4. Vide Stevens "Unfair Competition," pp. 10 ff., Davies "Trust Laws and Unfair Competition" pp. 311 ff., 27 Harvard Law Review, pp. 374 ff., Ibid., pp. 139 ff., Rogers, "Good Will, Trade Marks, and Unfair Trading" pp. 257 ff.

2. Both sides of the subject are most thoroughly treated in the report of the Committee on "Price-Maintenance"

in 1901, the court said in part: "I cannot doubt that the complainants have the right to sell their patented phonographs with the restrictions and upon the conditions contained in their 'jobbers' agreement,' and that the dealers buying the patented instruments from the jobbers with notice of those restrictions and conditions are bound thereby."¹

In *Victor Talking Machine Company v. The Fair*, decided in 1903, it was held that the owner of a patent who manufactures and sells the patented article may reserve to himself, as an ungranted part of his monopoly, the right to fix and control the prices at which jobbers or dealers buying from him may sell to the public, and a dealer who buys from a jobber with knowledge of such reservation, and resells in violation of it, is an infringer of the patent.

The *Bobbs Merrill Publishing Company* undertook to fix the retail price of its copyrighted books by placing a notice in each book indicating the price at which the book should be sold at retail. Any deviation from such price indicated was declared an infringement of the copyright. The United States Supreme Court held that the statute in securing to the holder of the copyright the sole right to vend copies of the book, conferred a privilege which, when the book was sold was exercised by the holder, and that the right secured by the statute was thereby exhausted.³ The court also held that "---it was not the purpose of the law to grant the further right to qualify the title of future purchasers by means of the printed notice affixed to the book, and that to give such right would extend the statute beyond its fair meaning and secure

1. 105 Fed. 960, (1901).

2. 123 Fed. 424, (1903).

3. 210 U.S. 339, (1908). The same opinion was expressed in *Bauer v. O'Donnell*; *The Well known Sanatogen* case decided in 1912, 229 U.S. 1. Vide 220 U.S. 373; *Dr. Miles Medical Co. v. Park*.

privileges not intended to be covered by the act of Congress."

In Fisher Flouring Mills Company v. Swanson , the plaintiff, a Washington corporation, manufacturers of flour, had entered into a contract with the defendant, a retailer, whereby it was agreed that the latter was to sell a special brand of flour, manufactured by the plaintiff, at a fixed advertised price. Defendant violated the contract by selling the flour at a lower price, whereupon action was brought by the milling company for damages. It was also sought to enjoin the defendant from selling the flour at less than the price agreed upon. The case was tried in the Superior Court of King County, Washington. Judgment was found for the defendant whereupon the plaintiff appealed the case to the Supreme Court of Washington. The question was presented: "Has a manufacturer, who has given a reputation to particular goods which he creates, the right to fix in his contract of sale to retailers a reasonable minimum price at which those goods shall be sold to consumers?" The court premised that no patent question or question of interstate commerce was involved. It was a common law question as there was no statute on the subject in the State of Washington. The court held in part as follows: "When the contract fixing the price is not ancillary to some main lawful contract, the sole object of the contract is to restrain competition and enhance prices, and its only tendency is to control the market---- it is invalid because of this tendency-----. Contracts fixing prices as incidental to some main contract, and involving less than a controlling part of a given commodity in a given market, not proceeding from, nor tending to create, or to maintain, a monopoly, will be sustained when the restriction is, ----- reasonable in reference to the interest of the public;-----.

"Finally, it seems to us an economic fallacy to assume that the competition which, in the absence of monopoly, benefits the public, is competition between rival retailers. The true competition is between rival articles, a competition in excellence, which can never be maintained if, through the perfidy of the retailer who cuts prices for his own ulterior purposes, the manufacturer is forced to compete in prices with goods of his own production, while the retailer recoups his losses on the cut price by the sale of other articles at, or above, their reasonable price-----."1

The above State court decision is clearly in opposition to the recent Federal court decisions. The court's definition of true competition as being between rival articles, "a competition in excellence" as contrasted with competition between retailers selling similar articles is of interest.

In 1915, the United States brought suit against the Kellogg Toasted Corn Flake Company on the grounds that the company was violating the Sherman Anti-Trust Act by its price fixing policy relative to its breakfast foods. The company printed on each carton a notice to the effect that the package must be sold at a given fixed price and that a sale at a lower price was considered an infringement of their patent rights. The court held in part: "The general rule is well settled that a system of contracts between manufacturers, jobbers, and retailers, by which the manufacturers attempt to control the prices for all sales by all dealers, at whole-sale or retail, whether purchasers or subpurchasers, eliminating all competition and fixing the amount which the consumer shall pay, amounts to restraint of trade, and is invalid both at common law and, so far as it effects interstate commerce, under the Sherman Anti-Trust Act."2

1. 137 Pac. 144. (1913). 2. 222 Fed. 725. Vide 223 Ill. 616.

The above cases seem to indicate that the problem of price-cutting versus price-maintenance is no longer complicated in the opinion of the courts by patent rights and copyrights. The fact that the manufacturer puts on the market a patented article will hereafter not give him a right to fix resale prices beyond that enjoyed by manufacturers of non-patented articles.

The recent decisions by the Federal courts declaring price maintenance schemes illegal and void are also sufficiently broad to make legal every method of price-cutting not plainly fraudulent. Some methods of price-cutting are however palpably "predatory"; for example, the advertising of an identified article at a price below its cost of production for the purpose of deceiving prospective purchasers, leading them to believe that all other articles sold by such price-cutter are equally reduced in price. Such practices are clearly contrary to every conception of fair dealing, and are plain fraud.

But the problem remains, can predatory price-cutting be eliminated from business practices without thereby establishing a general price-maintenance system? If the eradication of predatory price-cutting means the legalizing of a general price-maintenance system, would not the suppression of a minor evil be attained at too great a cost? Would such a change not inure to the permanent detriment of the consumer?

In considering the interests of the manufacturer of identified goods, the argument in the minority report made to the Chamber of Commerce of the United States in 1916 is to the point: "In the first place, let us not forget that in entering the production of branded merchandise he did it with the full knowledge that he had to face competition without the sheltering wing of legalized

price-maintenance."¹ In other words, no one has a vested interest in a legalized price-maintenance system.

Whether a law can be successfully framed that will reach all predatory price-cutting without legalizing a general price-maintenance system or whether predatory price-cutting will be effectively eliminated by the Federal Trade Commission as an unfair method of competition remains to be seen. In the meantime we shall have to rely upon the courts to mitigate the evil by dealing with the more flagrant forms of the practice.

1. Report of Committee on "Maintenance of Resale Prices" made to Chamber of Commerce of the United States 1916, p. 17.

No problem connected with market distribution has probably received more attention recently than the subject of Price-Maintenance.

One of the possible results of a legalized price-maintenance system, and the one most to be feared, is the formation of "gentlemen's agreements" between competing manufacturers of identified goods. With a legalized price-maintenance system and "gentlemen's agreements" between competitors there would be left little incentive for "competition in excellence" by the various manufacturers of identified commodities.

CHAPTER IV

Weights and Measures

1. Provisions by The National Government. "Experience in all ages of the world has shown that the regulation of weights and measures is a proper and even necessary subject for legislation; that in no other way can certainty and uniformity be secured. 'Divers weights and measures' were deprecated by the wise king and similar grievances led to the declaration in Magna Charta, that there should be but one weight and measure throughout the kingdom.'" ¹

The subject "Weights and Measures" deals with both the providing of standards and the enforcement of the keeping and proper use of such standards by venders of merchandise.

The constitution of the United States grants to Congress the power to fix the standard of weights and measures.² This provision, however, remained an unused power for many years, and up to the present time has been given effect in only a few instances. The English standard of weights and measures had been adopted by long custom in all the States, and legislation by the National Government on the subject was unnecessary.³

For the purpose of regulating the weight of coinage, a brass troy-pound weight was procured by the minister of the United States at London, in the year 1827, and this was adopted as the standard troy-pound of the mint of the United States.⁴ For revenue purposes Congress has also at various times provided for standards of weights and measures.⁵ These provisions, however, were

1. 19 Iowa 388, (1865).

2. Constitution of the United States, Article I, Section, 8.

3. 3 Wall. Jr. 46.

4. 4 Statutes at Large, 277, May 29, 1828.

5. "Collection of duties: What weights and measures to be used. All invoices shall be made out in the weights and measures of the country --from which the importation is made, and shall contain

not for the purpose of regulating the business transactions of the people. In *Weaver v. Fegely*, the highest court of the State of Pennsylvania held: "It is an error to suppose that the resolutions of Congress-----establish a standard of weights and measures to regulate the business transactions of the people. The mere grant in the Federal Constitution to Congress to regulate weights and measures does not extinguish the right in the States over the same subject, until Congress shall have exercised the power conferred."¹

In 1836, the following resolution was passed by Congress providing for the distribution of weights and measures: "No. 7. A resolution providing for the distribution of weights and measures. June 14, 1836. Resolved by the Senate-----, That the Secretary of the Treasury be, and is hereby directed to cause a complete set of all the weights and measures adopted as standards, and now either made or in the process of manufacture for the use of the several custom houses, and for other purposes, to be delivered to the

Governor of each State in the Union, -----for the use of the States -----

a true statement of the actual weights or measures of such merchandise, without any respect to the weights or measures of the United States." Act of June 30, 1864; 13 Stat. 217.

"For the purpose of estimating the duties on importations of grain, the number of bushels shall be ascertained by weight, instead of by measuring; and 60 pounds of wheat, corn 56, rye 56, barley 48, oats 32, pease 60, buckwheat 42, avoirdupois weight, shall respectively be estimated as a bushel." Revised Statutes of the United States, 1873-74, Section 2919.

"Standard of Proof Spirits. The commissioner of internal revenue -----may prescribe rules and regulations to secure a uniform and correct system of weighing, inspection, marking, and gauging of spirits." 15 Stat. of U.S. 125.

Definition of Gallon: "Gallon in internal revenue law shall be the wine gallon of 231 cu. in." 20 Stat. 351.

"Ton to be, for collection of duties, 20 hundred weight and each hundred weight to be 112 pounds avoirdupois." 12 Stat. 196.

"The Standard of the London Tower weight, and the English terms and denominations used to represent the fractions and multiples, were universally adopted in the United States." The *Miantinomi*, Case No. 9,521, 3 Wall. Jr. 46, 1855.

1. 29 Pa. St. Reports 27, (1857). In 61 Ky. 121, (Metcalf, Vol. IV 1862), it was held: "Congress has not passed any law to fix the

respectively, to the end that an uniform standard of weights and measures may be established throughout the United States."¹

In 1866, the use of the Metric System was authorized. The law provides that "--no contract or dealing, or pleading in any court, shall be deemed invalid or liable to objections because the weights or measures expressed or referred to therein are weights or measures of the Metric System." A table of the Metric System and its equivalents in the English system is also provided.²

For the purpose of securing uniformity in the measurements of sheet and plate iron and steel in the United States, a standard gauge has been adopted.³ No other gauge is to be used in determining duties and taxes levied by the United States on sheet and plate iron and steel.

A legal unit of electrical measure has also been established by Congress.⁴ An act to this effect was passed in 1894.

The foregoing are the only provisions of standards of weights and measures made by Congress.⁵

In 1901, the "Office of Standard Weights and Measures" was changed to "National Bureau of Standards." The functions of ----- the standards of weights and measures as it is authorized to do by the constitution. The laws of this State, therefore govern the subject. But Professor Hassler, who was employed for that purpose by the Secretary of the Treasury, under a resolution of the Senate, adopted May 29, 1830, prepared standards of weights and measures, for the use of the custom houses; and by a joint resolution of Congress, adopted June 14, 1836, the Secretary of the Treasury was directed to furnish a complete set of those weights and measures to the governor of each State,----- These were adopted by the State of Kentucky."

1. U.S. Stat. at Large, Vol. 15, p. 133. See Senate Resolution of May 29, 1830 relative preparation of standards.

2. 14 Stat. at Large 339, July 28, 1866. A resolution to furnish Agricultural Colleges with sets of standard weights and measures was passed in March, 1881. 21 Stat. at Large 521. See also 20 Stat. at Large 223; 23 Stat.L. 502; 25 Stat. L. 270-271 and 720.

3. 27 Stat. at Large 746. Act of March 3, 1893, Chapter 221.

4. 28 Stat. at Large 101. Act of July 12, 1894, Chapter 131.

5. The laws passed by Congress regulating the labeling of foodstuffs are passed by authority of the constitutional clause granting to

the Bureau consist in the "custody of the standards; the comparison of the standards used in scientific investigations, engineering, manufacturing, commerce, and educational institutions with the standards adopted and recognized by the Government; the construction when necessary of standards, their multiples and subdivisions; the testing and calibration of standard measuring apparatus; the solution of problems which arise in connection with standards; the determination of physical constants and the properties of materials, when such data are of great importance to scientific or manufacturing interest and are not to be obtained of sufficient accuracy elsewhere."¹

Congress the power to regulate interstate commerce and is no attempt to fix standards. See chapter on Pure Food Legislation.

1. 31 Statutes at Large 1449. Section 8 of this act provides that reasonable fees shall be charged for all tests except those performed for the United States and the State Governments.

State institutions may also call upon and receive from the Bureau, free of charge, such services specified as State Governments are entitled to. 24 Op. Atty. Gen. 667, (1903).

2. Provisions and Regulations by The State Government. It is apparent from the foregoing section that Congress has aided the States in adopting uniform standards of weights and measures, but has not passed any law fixing such standards for the States as it is authorized to do by the constitution. This leaves the States free to adopt their own standards of weights and measures and to regulate and inspect the standards used and the weighing and measuring of articles of merchandise by such standards.¹

The Illinois legislature in 1845 passed a law providing for standards of weights and measures, the sealing of the same, and penalties for the use of false weights and measures in buying and selling.² The act is in part as follows:

"Section 1. There shall be but one standard of measure of length and surface, one weight and one measure of capacity, throughout this State, which shall be in conformity with the standard of measure, length, surface and weight established by Congress.

"Section 2. All commodities sold by heaped measure, shall be duly heaped up in the form of a cone,-----.

"Section 3. All measures used for measuring dry commodities, not

1. 61 Ky. 121; 3 Wall. Jr. 46; 109 Cal. 310.

"The other power, 'to fix the standard of weights and measures' was, doubtless, given from like motives of public policy, for the sake of uniformity, and the convenience of commerce.^a Hitherto, however, it has remained a dormant power, from the many difficulties attendant upon the subject, although it has been repeatedly brought to the attention of Congress in most elaborate reports.^b Until Congress shall fix a standard, the understanding seems to be, that the States possess the power to fix their own weights and measures; or, at least, the existing standards at the adoption of the constitution remain in full force.----" a. The Federalist No. 42. b. By Thos. Jefferson and John Q. Adams. Story on The Constitution, Section 1122.

"But until it (regulation of weights and measures) shall be exercised by Congress, each State, it is presumed, retains the right to fix the standard of weights and measures within its own precincts." Rawle on the Constitution, Chapter 9, p. 102.

2. Revised Statutes, 1845, Chapter 108, p. 532. An act approved March 22, 1819, provided that county commissioners should secure

heaped, shall be stricken with a straight stick or roller, and of the same diameter from end to end.

"Section 4. Contracts hereafter to be executed, made within this State,----shall be taken and construed to be made according to the standard weight and measure thus ascertained.

"Section 5. The hundred weight shall consist of one hundred pounds, and twenty such hundreds shall constitute a ton.

"Section 6. ---The bushel shall consist of 60 pounds of wheat, 54 of rye, 52 of Indian corn, 44 of barley, 40 of buckwheat, and 32 of oats.

"Section 7. The following standards -----a yard, a pound, a liquid gallon, and a half bushel, shall be procured by the State sealer of weights and measures, and deposited in a chest in his office-----.

"Section 8. Copies of the said original standards ----shall be deposited by the county sealers in the offices of the said county sealers of the State.-----.

"Section 10. The several county sealers shall compare all weights and measures which shall be brought to him for that purpose, with the above mentioned copies of such standards in their possession; and when the same are found or made to conform to the legal standard, the officers comparing them shall seal and mark such weights and measures.

"Section 14. The Secretary of State shall be, ex officio, State sealer of weights and measures, and the clerks of the county commissioners' courts shall be county sealers of weights and measures for their several counties."¹

The above act, revised and amended in minor points, is -----
standards of English measures and weights. Revised Laws of Ill. 1833, pp. 660 ff.

1. Statutes of Illinois, 1860, pp. 276 ff.

the present general law of the State of Illinois regulating weights and measures.¹

It was early made a criminal offense for any one knowingly to sell by false weights or measures or knowingly to use false measures at any mill in taking toll for grinding corn or other grain. Such a person was deemed a common cheat and subject to fine and imprisonment.² This law is part of the criminal code at the present time.

A law regulating platform scales and providing for the inspection of the same was passed in 1861 and amended in 1869 so as to include all scales weighing three tons or over.³ The act was repealed in 1871.

Regulation on the weighing of coal at the mines has been the subject of much legislation and litigation. The weighing of coal at the mines, as provided for by law, is not for the purpose of securing the correct weight for the purposes of sale, but for the purpose of securing a basis upon which the wages of the miners may be computed. In 1883, the following act was passed:

"Section 1. ----That the owner, ---or operator of each and every coal mine ---in this State shall furnish, ----and place upon the switch or railroad track adjacent to said coal mine---a 'track scale' ---and shall weigh all coal hoisted from said mine ---before or at

1. In 1847, the weight of mineral coal was fixed at 80 pounds per bushel; Session Laws, 1847, p. 168. In 1851, the weight of a bushel of Indian corn was fixed at 56 pounds; Ibid., 1851, p. 112. In 1855, the following weights were fixed: Shelled corn 56 pounds, corn in ear 70 pounds, wheat 60 pounds, rye 56 pounds, oats 32 pounds, barley 48 pounds, Irish potatoes 60 pounds, sweet potatoes 55pounds, Ibid., 1855, p. 176. In 1887, the weights of other commodities were fixed. Vide Session laws 1887, pp. 309 ff., Ibid., 1889, p. 362. Weights of sweet potatoes was changed to 50 pounds per bushel in 1891, Ibid., p. 214. In 1913, slight changes and additions were made to former laws, Ibid., 1913, pp. 609 ff.

2. Revised Stat. 1845, Chap. 30, Sec. 155. 3. Public Laws of Ill. 1861, p. 186. Ibid., 1869, p. 393. Ibid., 1871, p. 698. 3. The reasons for the repeal of this law are apparent; cities and villages

the time of being loaded on cars, wagons,-----: provided that in cases where track scales cannot be used, or the product of such mine ---will not justify the expense of a track scale, the owner,-- shall be permitted to furnish a platform scale ----.

"Section 2. All coal produced in this State shall be weighed on the scales as above provided; and the weight so determined shall be considered the basis upon which the wages of persons mining said coal shall be computed.

"Section 3. It shall be lawful for the miners, employed in any coal mine, to furnish a check weigher at their own mine." (Laws of Illinois, 1883, p. 113.)

The above act is with slight changes made in revisions and by amendments the present law relative to the weighing of coal at the mines. The constitutionality of the act has been attacked on several grounds, notably that it deprived the operator of the mine of his property without due process of the law and that it impaired obligations of contract. The attacks, however, have been unsuccessful.¹

An amendment made to this act, in 1885, provided that records of all coal weighed at the mines be kept and that these records be subject to the inspection of all interested.² The constitutionality of this amendment was tested in *Millett v. People*.³ The court held that the legislature had no power to require the owners and operators of coal mines in this State to furnish scales, employ a person to use them, and keep books of entries of weight for the benefit or information of the public without first making compensation to the owners. Such a requirement was held tantamount to an -----

 were given the power to do their own inspecting of weights and measures of every kind by the "Cities and Villages Act" of 1871.
 1. 110 Ill. 590, (1884). 15 Ill. App. 241. 2. Laws of Ill. 1885, pp. 221 ff. 3. 117 Ill. 294, (1885).

appropriation to public use of private property.¹

By a revision of the act of 1883, made in 1887, all coal mine operators not shipping by either rail or water were released from keeping scales and from weighing the coal at their mines. An amendment to this revision provided that all coal hoisted should be weighed in fit cars before dumping.² Both the revision and the amendment to it were held unconstitutional on the grounds that the act singled out certain kinds of mine operators and that it interfered with the right of contract. Under it the miners and operators could not agree upon any method of determining the weight of the miners' cars except the one pointed out by the act.³

The more detailed regulation relative to the weighing and measuring of articles in commerce and the inspection of the weights and measures used has always been exercised by the city and village authorities in this State; the standards of weights and measures used being, of course, those furnished by the State government. The cities and villages incorporated prior to 1871 usually exercised these powers by virtue of the special charters granted them, whereas those incorporated since that year exercise these powers by virtue of the general grant to municipalities by the act of 1871.⁴ By this act powers are granted as follows: "To regulate the sale of bread-----; prescribe the weight and quality of the bread in the loaf. ---To regulate the inspection, weighing and measuring of brick, lumber, fire-wood, coal, hay, and any article of merchandise. ---To provide for the inspection and sealing of weights and measures. To enforce the keeping and use of proper weights and measures by vendors."⁵

1. So much of the amendment was held unconstitutional as placed the above mentioned burdens upon the operators.

2. Laws of Ill., 1887, pp. 235 ff. Ibid., 1891, p. 170. 3. 160 Ill. 459. 4. Laws of Ill., 1871, pp. 281 ff. 5. Rev. Stat. 1874,

The above act, although revised and amended from time to time, has not been materially changed in its important provisions.

A law passed in 1909 specifically delegates to cities the power to require that all grain, feedstuffs, fruits, vegetables, dairy products, meats, groceries and all other similar articles of merchandise, in the absence of an agreement to the contrary, shall be sold by standard avoirdupois weight or by numerical count.¹

As in the case of the powers granted to cities to regulate the sale of foods and drinks, the courts have in every important case liberally construed the powers granted cities and villages to regulate and inspect weights and measures, and have held ordinances made under them valid provided that they were reasonable and not in conflict with the State laws.

In *Spring Valley v. Spring Valley Coal Company*, it was held that "--where a city has been granted power 'to provide for the inspection and sealing of weights and measures,' and 'to enforce the keeping and use of proper weights and measures by vendors,' an ordinance providing for the election of an inspector of weights and measures, making it his duty to test the accuracy of scales used by -----
Chapter 24, Article 5, Section 62, Divisions 52-56.

In the revised Municipal Code of the City of Chicago of 1911, there are found among others the following regulations:

"2817. The mayor shall from time to time appoint so many and such persons to be city weighers as he may think proper,----

"2819. Each of said weighers ---shall provide his own scales ---- weights and measures.

"2830. There is hereby created the office of inspector of weights and measures. He shall be appointed by the mayor -----

"2832. It shall be the duty of said inspector to inspect and examine once in each year all weights, measures, -----, used for weighing and measuring in the city,---and deliver to the owner thereof a certificate of their accuracy.

"2841. The controller, at the expense of the city, shall procure correct and approved standards -----adopted by the State of Illinois.

"2842. Every person using weights, measures, ----or any instrument, in weighing or measuring any article intended to be purchased or sold in the city-----shall cause the same to be inspected and shall have it sealed by the inspector." Municipal Code, 1911, Sec. 2817ff.

1. Laws of Illinois, 1909, p. 139.

persons or corporations in the sale of any article or commodity, and to condemn scales found not to conform to the standard of the State of Illinois, is reasonable, and a proper exercise of the power granted the city; ----."1

An ordinance passed by the city of Savanna provided that all coal sold in the city should be weighed by the city weighmaster and a fee charged. In a case coming up under this ordinance, the State Appellate Court held that the ordinance imposed a burden on coal dealers not imposed on other merchants and hence was invalid.²

The city of Chicago, in 1907, passed an ordinance which provides in part : "No person or corporation shall, after Oct. 1, 1907, sell---within the city of Chicago any milk or cream in bottles -----unless each of said bottles ----shall have blown into it, ----the capacity thereof; ---the inspector of weights and measures ---shall have the right, at any time, to examine any bottle---in which milk or cream is sold or offered for sale in the city of Chicago---in order to ascertain whether such bottle ---is of a capacity less than that which it purports to be;----."3 In a case arising under this ordinance the State Supreme Court held: "Imposing a penalty on a milk dealer having in possession, with intent to use them, any bottles or jars of less capacity than is marked on them, is a valid exercise of the police power, and does not unconstitutionally deprive him of his property." 4

1. 71 Ill. App. 432.

2. 81 Ill. App. 471, (1898). Vide Heath and Milligan Co. v. Linseed Oil Co., 197 Ill. 632, (1902).

3. Sec. 2479, Revised Municipal Code of Chicago, 1905 as amended June 11, 1906 and Sept. 3, 1907.

4. City of Chicago v. Bowman Dairy Co., 234 Ill. 294, (1908). In Chicago v. Schmidinger, 243 Ill. 167, the Court held: "--A bread ordinance, which provides that bread shall not be made for sale in any way but in one-half, three-fourths, or one pound loaves or in two, three, four, five, or six pound loaves, is not unconstitutional as depriving bakers of property without due process of law." Vide 174 Ill. App. 64; 159 Ill. App. 522.

CHAPTER V

Licenses.

The police and taxing powers of the State are held to be broad enough to subject certain mercantile activities to license regulations. The grounds on which these activities are thus regulated are various. The purchase and consumption of certain products has a tendency to result to the detriment of the buyer; the sale of liquor and opiates is subjected to license regulations for this reason. Such products are further considered luxuries and hence a proper and productive source of revenue. The sale of some products must necessarily be subject to special inspection and supervision because of the highly perishable nature of the products and the resulting danger to the unwary consumer; the sale of fish is a familiar example. License fees are in such cases required to cover the expense of inspection. Certain mercantile businesses, which enjoy the protection of the law, escape all regular taxation; peddling, hawking, and itinerant vending are the more common examples. Often mercantile activities are made subject to license regulations for two or more of the above reasons, or for the purpose of suppressing the businesses entirely.

The constitution of 1848 conferred upon the State legislature the power to tax peddlers, auctioneers, brokers, hawkers, merchants, commission merchants, innkeepers, and grocery-keepers, in such manner as they should see fit.¹ Similar powers are conferred upon the General Assembly by the constitution of 1870.²

1. Constitution of Illinois 1848, Article IX, Section 2 in part.

2. Ibid., 1870, Article IX, Section 1 in part.

Under the police regulations of the revised statutes of 1845, there is found an act containing the following provisions:

"Section 1. No merchant, auctioneer, peddler, or other person --- shall be permitted to sell, vend or retail, either at private sale or public auction, any goods,-----without having first obtained a

Hawkers and peddlers who desired to hawk or peddle any goods or wares throughout the State were early granted licenses so to do upon the payment of a fee of fifty dollars annually.¹

By the "Cities and Villages Act" of 1871, the councils of cities and the presidents and boards of trustees of towns and villages are given the following powers:

"To fix the amount, terms and manner of issuing and revoking licenses.

"To license, tax, regulate, suppress and prohibit hawkers, peddlers, ---and to revoke such licenses at pleasure.

"To license, regulate, and prohibit the selling or giving away of any intoxicating, malt, vinous, mixed or fermented liquor-----.

Provided, that in granting licenses such corporate authorities shall comply with whatever general laws of the State may be in force relative to the granting of licenses."²

This license power, however, does not extend to the licensing of farmers, fruit growers, vine growers, and gardeners. These ----- license for that purpose, as hereinafter provided.

"Section 2. The county commissioners' court of the respective counties in this State shall have power to grant such license.

"Section 3. Such license shall authorize the person receiving it, to vend, sell and retail goods----within said county, for the space of one year-----.

"Section 7. The preceding section shall not be construed to extend to the sale of goods, wares and merchandise, by persons who are not merchants, auctioneers, grocers, --or peddlers, nor to merchants who pay an annual tax upon merchandise, assessed according to the revenue laws of this State, nor to persons who sell commodities manufactured by themselves in this State." Ibid., Chap. 64,

This act also found in the revised statutes of 1860 under the title "Police Regulations" pages 830 and following, is not found in the revised statutes of 1874. There is no record of its repeal in the session laws. The "Cities and Villages Act" of 1871 by granting to cities and villages the authority to grant licenses for all purposes named in the above general act made the general act of practically no effect. Hence probably repealed by implication.

1. Illinois Statutes 1860, p. 989. Public Laws of Ill. 1847, p. 79.

2. Revised Statutes 1874, Chap. 14, Article 5, Section 62, Div. 4 to 46. Illinois Session Laws 1871-2, p. 218. Before the passage of the act of 1871, providing for the incorporation of cities and villages, the legislatures granted cities and villages extensive

producers, by a special act, have the undisputed right to sell in any place or market where such products are usually sold and in any quantities that they may see fit, the produce from their farms, orchards, vineyards, and gardens.¹

The power to regulate itinerant merchants and transient venders of goods was granted city and village authorities in 1887.²

The business which has been the subject of much legislation and of more license regulation than any other in the State is the liquor or dram shop business. It was early made a criminal offense to sell liquor in the State without a license, and cities and villages were granted in their charters the exclusive authority to issue or with-hold licenses for that purpose within their limits.

The general "Cities and Villages" act of 1871 grants cities and villages the same powers.

An act of 1874, in force at the present time in all territory not anti-saloon territory, provides that "the county boards of each county may grant licenses to keep so many dram shops in their county as they may think the public good requires, upon the application, by petition, of a majority of the legal voters of the town, if the county is under township organization, and if not--- then of a majority of the legal voters of the election precinct--- where the same is proposed to be located---"³

This act has been amended and revised a number of times.⁴

powers in their charters to license merchants not specifically exempted from license regulation by the constitution and by State law.

All corporations in this State must be licensed before opening books for subscriptions for the capital stock of the same.
Laws of Illinois, 1872, pp. 296 ff.

1. Ibid., 1871, p. 416. 2. Ibid., 1887, p. 117.

3. Statutes of Illinois, 1860, Vol. 1, Criminal Code, Division XI, Section 132. Revised Statutes 1874, Chap. 43, pp. 438 ff.
For law relative to anti-saloon territory see Laws of Ill. 1907-8, p. 297.

4. Ibid., 1877, p. 99; Selling to minors or drunkards is prohibited.

In 1885, a law was passed which provides that all manufacturers, importers, and agents of any artificial fertilizer exceeding five dollars per ton in price, must obtain a license.¹

The following legislature passed an act which required every itinerant vendor of drugs, nostrums, ointments or appliances of any kind to secure a State license from the State Board of Health. The fee was fixed at one-hundred dollars.² This act was held unconstitutional on the grounds that the only effect of such an act was to give the druggists of the State a monopoly of the sale of all proprietary medicines. The fee was further considered not only unreasonably high but prohibitory.³

An act passed in 1911 and in force at the present time, requires all itinerant vendors to make a deposit of five-hundred dollars with the Secretary of the State in addition to paying a State license fee of twenty-five dollars. The proper municipal officer is further empowered to exact a local license fee for the privilege of vending within the limits of the corporation.⁴

This act defines an itinerant vender as "any person conducting in the State either in one locality or in travelling from

Ibid., 1883, p. 92; License fee raised to not less than 500 dollars. Ibid., 1887, p. 194, This act prohibits the sale of intoxicating liquors outside of cities and villages in less quantities than five gallons and in the original package as put up by the manufacturer. This act does not repeal the act of 1874 as amended. Ibid., 1891, p. 105; Sale of liquor to minors is prohibited. Ibid., 1903, p. 164; City boards are authorized to grant licenses, upon petition of majority voters, to persons to sell liquor for future delivery. Licenses to be not less than 500 dollars annually. This act applies only to those soliciting for future delivery in quantities less than five gallons. Ibid., 1907-8, p. 302; No license may be granted in anti-saloon territory.

1. Ibid., 1885, amended 1903, p. 5.

2. Ibid., 1887, p. 227.

3. Wilson v. People, 249 Ill. 195, (1911). For an act conferring upon the Board of Pharmacy discretionary power to issue permits to persons to sell patent or proprietary medicines, see supra p. 96.

4. Laws of Illinois, 1911, p. 291. In 1901, an act was passed granting ex-union soldiers and sailors the right to vend, hawk, and peddle goods without license. This act does not extend to the

place to place, a temporary or transient business of selling goods, remaining in any one place not more than 120 days."

Commercial travellers are exempted from license regulation by this act as are such salesmen by all the other acts of the State dealing with license regulations.

It is apparent from the foregoing acts and regulations that the dram shop business and itinerant vending are the two main mercantile activities that have been restricted by license regulations during the last fifty years in this State. The tendency has been to increase the restrictions in the case of both activities by raising the license fees charged.

The well known increasing opposition on the part of many people to the consumption of liquor is responsible for the increased restrictions in the case of the former activity.

The increased restrictions placed upon itinerant and transient venders are due to several causes. The regular retail merchants consider that their sales are decreased to the extent that these venders sell lines of goods similar to theirs. Consequently they are using their influence to secure the enactment of laws intended to suppress such vending. The law conferring upon the State Board of Pharmacy discretionary power in the granting of permits to sell patent and proprietary medicines, and the act requiring a prohibitory license from the itinerant vender of such medicines illustrates this fact. The sale of inferior and worthless articles of merchandise and the fraudulent schemes often resorted to by these salesmen have also been conducive in arousing public sentiment against them.

The sale of commercial fertilizers is subjected to license

vending or peddling of liquors. Laws of Illinois, 1901, p. 236.

regulations for the purpose of protecting the purchaser against fraud. This act requires that each lot of such fertilizer sold be accompanied by a written statement setting forth the chemical constituents of the contents.

The hawking of fruits and vegetables by persons not the producers of these commodities is not usually subjected to burdensome license regulations. The hawking of these products frequently takes the glut from the market and means an economic saving to the consumers.

The enactment and execution of license regulations are left almost entirely to city and village authorities, and the State courts have been liberal in construing the powers granted for this purpose provided they are reasonably exercised and not in conflict with the laws of the State.¹

1. "A city organized under the general law has no power to require merchants to take out licenses." *City of Cairo v. Bross*, 101 Ill. 475.

"Canvassing or taking orders for future delivery is not subject to license regulations." *Rawlings v. Village of Cerro Gordo*, 135 Ill. 36.

"Ordinances requiring unreasonable fees are invalid." 61 Ill. App. 374. 67 Ill. App. 435.

"Municipal authority to exact license fees may not be delegated." 81 Ill. App. 334.

For act requiring persons or corporations, conducting wholesale fish markets, to secure license, see *Supra* p. 105.

CHAPTER VI

Miscellaneous Regulations

The following regulations, either directly or indirectly affecting the mercantile business in the State, do not classify under the subjects treated in the preceding chapters. Some of these regulations are of historic interest only; for example, the restrictions on trading with the Indians and on the sale of playing cards and dice. Some of these regulations are, however, of vital importance at the present time. The regulation of commission merchants, and the "bulk Sales act" are the more significant.

Restrictions on The sale of Obscene Books and Pictures.

Laws have at various times been passed in this State regulating or prohibiting the sale of obscene books, pamphlets, and pictures. The present law prohibits the sale and display of such articles and the employment of minors in the handling of the same.¹ A law found in the revised statutes of 1845 forbade "the sale of playing cards, dice, billiard tables or any other device or thing made for the purpose of being used at any game."²

Sale of Lead Minerals. An act of 1861 regulates the sale and purchase of lead minerals. All dealers in this article are required to keep books stating the amount purchased and sold, and the place where such minerals are dug.³ The act is still on the statute books.

1. An act passed in 1871, revises Section 128, Division 11, of Chapter 30 of the revised statutes of 1845. Laws of Illinois 1871, p. 577.

By an act of 1873, the fine for the sale of obscene literature was raised from 25-500dollars to 100-1,000 dollars for each offense. Ibid., 1873-4, p. 124.

All common carriers were prohibited from carrying such products. For present act see Laws of Illinois, 1889, p. 114.

2. Statutes of Illinois, 1860, Div. 11, p. 396.

3. Public Session Laws of Illinois, 1861, pp. 140 ff.

Act for The Protection of Consignors of Produce. An act having for its object the protection of consignors of fruit, grain, flour, and other commodities to commission merchants was passed in 1869, and is in force at the present time. The act makes it a criminal offense for any commission merchant or his agent to convert to his own use any proceeds arising from the sale of any such produce or the failure to deliver to the consignor such proceeds after deducting the usual commissions.¹

A more comprehensive act regulating commission merchants was passed in 1899.² This act provides "that the commission merchant shall, upon the consumation of the sale of the produce consigned to him, immediately render a statement to the consignor giving the gross amount of the sale, freight charges and all other charges." The act also provides for a board of inspectors. The duty of such board is "to receive complaints regarding the disposition of the articles of country produce shipped on commission to licensed receivers, and instruct inspectors to investigate the same. "Every person, firm or corporation in the State of Illinois doing business in a city of more than 50,000 population receiving on consignment for sale on commission butter, eggs, poultry, game, dressed calf, green and deciduous fruits, berries, and other commodities the produce of the farm, with the exceptions grains, live stock and dressed meats, shall first procure from the board a license to carry on said business,-----"

Pawnbrokers. Acts regulating pawnbrokers in their business have been passed from time to time. These acts require such business men to keep records of articles pawned and to make reports to sheriffs. Rates of interest are also fixed and buying from

1. Public Laws of Illinois 1869, pp. 95 ff.

2. Laws of Illinois 1899, pp. 364 ff.

children is prohibited.¹

Restrictions on The Sale of Tobacco to Minors. The sale of tobacco, in any of its forms, to minors of sixteen years or under, unless upon the written order of parent or guardian, was prohibited by an act passed in 1887.² An act regulating the manufacture and sale of cigarettes was passed in 1907.³ The act is in part as follows: "That every person who shall manufacture, sell or give away any cigarette containing any substance deleterious to health, including tobacco, shall be punished-----.

"Every person under the age of eighteen years and over the age of seven, who shall smoke or use cigarettes, on any public road, street, ally or park or other lands used for public purposes, or in any public place of business or amusement, shall be guilty of a misdemeanor and punished-----.

"That every person who shall furnish any cigarettes in any form to any such person -----shall be punished -v---."

Sale of Deadly Weapons. The sale and manufacture of deadly weapons and explosives has been the subject of considerable regulation. The sale of metallic knuckles and other weapons of that character is prohibited. Deadly weapons can not be sold unless the purchaser's name is registered by the retailer at the time of the sale.⁴

1. Laws of Illinois 1879, p. 219; Ibid., 1903, p. 270; Ibid., 1909, pp. 300 ff.; Ibid., 1911, pp. 294 ff.

2. Ibid., 1887, pp. 298 ff. 3. 1907, pp. 265 ff.

4. Ibid., 1881, pp. 73 ff.; Ibid., 1887, pp. 180 ff.; Ibid., 1889, p. 125; Ibid., 1903, pp. 159 ff.; the laws of 1913, p. 255, prohibit the sale of gasoline in any but containers marked "Gasoline" in red letters. The law of 1913, p. 257, prohibits the sale of toy pistols for shooting blank cartridges. See also Laws of 1915, pp. 370 ff.

An early act forbade the trading with Indians. It is in part as follows: "No person of this State, or other person or persons, shall purchase of, or otherwise trade or barter with any Indian or Indians in this State, for any firearms, knives, tomahawks, blankets or horses,-----." Rev. Stat. 1845, Chap. 64, Sec.8.

The Bulk Sales Act. The so-called "Bulk Sales Act" or an act to prevent the sale of merchandise in fraud to creditors was passed in 1913.¹ This act provides in part as follows:

"Section 1. That the sale, transfer, or assignment in bulk of the major part or the whole of a stock of merchandise, -----otherwise than in the ordinary course of trade and in the regular and usual prosecution of the vendor's business shall be fraudulent and void as against the creditors of the said vendor, unless the said vendee shall, in good faith, at least five days before the consummation of such sale, transfer or assignment demand and receive from the vendor a written statement under oath of the vendor----- containing a full, accurate and complete list of the creditors of the vendor,-----and the amounts owing to each -----, and if there be no creditors, a written statement ----to that effect; and unless the said vendee shall at least five days before taking possession of said goods and chattels and at least five days before the payment or delivery of the purchase price, ----in good faith, deliver -----

1. In 1905, an act was also passed which had for its object the prohibition of sales of merchandise in fraud to creditors. This act was declared unconstitutional in *Opp v. Morehead*, 235 Ill. 40. For the act see Laws of Illinois 1905, p. 284.

In 1899, an act was passed which had for its object the prohibition of the use of the national flag or emblem for any commercial purposes or as an advertising medium. It was made unlawful for any person to use or display the national flag or emblem, or any drawing, lithograph, engraving, daguerreotype of the same, for commercial purposes. Laws of Illinois 1899, p. 234.

This act was declared unconstitutional in the following year. The court held: "The exercise of police power by the legislature is limited to enactments tending to promote the public health, morals, safety and general welfare.

"The use of the flag trademark or label is not harmful in itself.

"The use of the likeness of the national flag for a trademark and label has been sanctioned by the Federal authorities in charge of the enforcement of trade mark laws-----.

"The flag law is unconstitutional, not only as infringing upon the personal liberty guaranteed by the constitution, but as depriving citizens of the United States of a privilege, in contravention of section 1, of the fourteenth amendment of the Federal

-----a notice in writing to each of the creditors of the vendor named in the said statement -----, of the proposed purchase by him of the said goods -----: Provided, however, that it shall be lawful for the vendee to pay to the vendor so much of the purchase price as shall be in excess of the total amount of the indebtedness of the vendor, before the expiration of the five days hereinabove referred to." ¹

The uniform sales act was passed by the Illinois legislature in 1915.²

constitution." A. Ruhstrat v. People, 185 Ill. 133, (1900).

1. Laws of Illinois 1913, pp. 258 ff.
2. Ibid., 1915, pp. 604 ff. The uniform sales act is a general act.

In 1915 an act was passed for the purpose of regulating the making, remaking and renovation of mattresses or bed comforters and the sale of the same. This act forbade the use of second hand material in mattresses and prohibited the sale of the same. Laws of Illinois 1915, p. 375.

The act was declared unconstitutional.

CHAPTER VII

Summary and Conclusions

The history of legislation regulating mercantile business in the State of Illinois proves no exception to the principle known as the "unity" or "continuity in history." It shows that there have been no sudden changes in policies or standards in this field of regulation, the legislation having consisted for the most part of enactments supplementing the common law and making it easier to enforce its principles. Many acts and practices, illegal at common law, have also been specifically declared to be so in statutes.¹

As in other fields of legislation there has been a constant attempt to meet the shortcomings of the common law and thus bring about a more perfect adjustment between law and economic conditions on the one hand and between economic conditions and the changing standards of business ethics on the other.

Undoubtedly the standards of business ethics have risen somewhat during the last fifty years, but this rise has not been commensurate with the increase in the volume of legislation passed in this field during the same period. Changes in economic conditions, such as concentration of wealth in the hands of the few, perfected ingenuity of the unfair trader, progress in science, greater publicity, territorial distribution of labor, growth of centers of population, and increase of interstate commerce are some of the factors responsible for the mass of these new regulations. If more property has become "affected by a public use" it is primarily due

1. Professor Freund in discussing the shortcomings of the common law as it stood at the beginning of the 19th. century says: "First, its standards had failed to keep pace with advancing or changing ideals; --- it developed no principles of reasonableness regarding economic standards or equivalents (oppressive practices of employment, --- reasonableness of price) ; ---."Thirdly, --- the law of fraud was too lax to insure commercial fair dealing, ----."

to a greater interdependence in our economic life and relations and not so much to changes in our conceptions of standards of business ethics.

Legislation regulating mercantile distribution enacted prior to 1890 came for the most part in response to the demands of the agricultural classes, the predominant producing interests of the State, seeking protection against alleged fraudulent marketing conditions and competition. These demands early found expression in the so-called "Granger Movement". The railroads of the West and the Northwest and the warehousemen and grain dealers of the city of Chicago were the principal objects of attack. As a result of this movement, provisions regulating public warehouses in all cities with a population of 100,000 or more were placed in the constitution of 1870 followed by the enactments of 1871, which among other things provided for the Railroad and Warehouse Commissioners charged with the enforcement of the railroad and warehouse laws.

These early laws are, with amendments on minor points, the laws regulating public grain warehouses at the present time.

In the early seventies, the dairying interests of the State began to demand protection against the manufacture and sale of imitation butter and skimmed cheese. These products were alleged to be destructive of both the local and distant markets for the genuine products.

The State passed a law for their protection in 1879 and again in 1881. The National Government also passed an act in 1886 for their protection by placing a tax upon the manufacture and sale of oleaginous products made in imitation of butter. The agricultural interests received further protection during this period by the enactment of laws prohibiting traffic in diseased plants and animals. Freund, "Standards of American Legislation" p. 70-71.

A general law prohibiting the manufacture and sale of adulterated foods was passed in 1881, and an act regulating the manufacture and sale of canned and preserved foods was passed in 1885, but as no special provision was made for their enforcement, they remained generally inoperative.

No other important laws regulating mercantile business were passed prior to 1890. The agricultural classes as producers were thus the only classes receiving special protection, all effective legislation having been passed in response to their demands. The consumer, although indirectly protected and benefited, was left to rely upon the common law remedies, the principle of caveat emptor prevailing.¹

By 1889 the first anti-trust wave began to pass over the country as a result of the increase of pools, trusts, and other combinations in restraint of trade. Investigations by the National and State governments were also conducive toward increasing the agitation against monopolization in the fields of manufacture and market distribution.

Illinois, following the lead of a number of other States, passed its first anti-trust law in 1891. This act applies to all industries alike, extractive, manufacturing, and mercantile. This may be said to be the first important law seeking to protect the consumer or buyer. Its main purpose is to protect him against monopoly prices.

The pure food agitation, commenced by the dairying interests of the State in the early seventies, and resulting in the legislation against the sale of imitation butter and cheese, was now

1. Throughout this entire period, however, as well as at the present time, the village and city authorities were regulating many phases of the mercantile business within their jurisdictions for the protection of the consumer.

taken up by the consumers who demanded protection against the increasing adulterations of, and substitutions for, pure food products of all kinds.

A comprehensive act was finally passed in 1899. This not only restricts the manufacture and sale of adulterated and poisonous foods, but also provides for a special agency charged with its enforcement. The National Pure Food Act of 1906 greatly assists the State authorities by keeping the impure and adulterated products out of the channels of interstate commerce.

The legislation since 1899 has been mostly in the nature of amendments to and revisions of former acts rather than extensions of regulations into new fields.

New problems in the regulation of mercantile business have, however, arisen during the last twenty years which threaten to be difficult of solution. Various practices which are considered unfair methods of competition have been making their appearance. These problems are difficult of solution for several reasons: both manufacturers and merchants whose immediate interests are not served by similar laws are involved; both State and interstate commerce is concerned; patent rights, copyrights, brands and trade-marks complicate the situation; and many of the practices are not inconsistent with established common law principles. These problems are further difficult to deal with for the reason that the suppression of these methods usually means interference with the right of contract. The suppression of the unfair methods of competition may also directly further monopolization.

The term "unfair competition" has not been definitely defined for the reason that no criterion or underlying unity has been discovered which serves as a mark of identification or earmark

whereby a method of doing business may be distinguished as unfair. This fact makes it doubly difficult to so frame laws that they will reach these alleged unfair practices without at the same time interfering with fair methods of dealing. The problem is, how far may the interference with the right of contract be profitably carried for the purpose of preserving freedom of competition and trade.

Legislative action relative to these practices should not be taken simply with a view to immediate relief, but rather with a view to the ultimate results. By a careful study and investigation of the reasons why certain interests seek the suppression of these so-called unfair methods more judicious action may be taken.

Although there has been no concentration of the mercantile business in the hands of the few as there has been concentration in other fields of economic activity, there is a tendency for merchants to become more and more limited in activity by policies and schemes imposed upon them by the manufacturers and jobbers whose goods these merchants handle.¹ To the degree that the merchants become mere instruments in the hands of the manufacturers, competition between them becomes more apparent than real, and the problem of regulating the mercantile business becomes the problem of regulating the manufacturers. The problem, for example, of the maintenance of resale prices becomes important in view of these conditions.

A further condition necessary in order to settle many of the problems connected with the regulation of mercantile business in the permanent interest of all is a keener recognition of the important place which this business holds in our economic system. Legislation passed with a view to benefiting and protecting only the producers of the articles and commodities of commerce, or of

1. Chain stores and certain mail order houses, although not monopolistic in their businesses, represent concentration of considerable capital under centralized management.

protecting only the producers and consumers of the commodities in disregard of the welfare of the mercantile class must necessarily, in the long run, result to the detriment of all.

It must be recognized that barriers placed in the way of mercantile distribution are as truly interferences with production as barriers placed in the way of manufacturing, and that the extra expense thereby incurred will ultimately become a part of the price of the goods.

The production of form utilities in contra-distinction to the production of place utilities, and particularly in contrast to the production of time and possession utilities has always been considered the more commendable type or form of economic activity. The man who produces grain and vegetables and the corporation that produces machinery and construction materials are considered the bulwarks of our economic system, whereas the man or company that buys these products at a certain figure, stores them for a time, and then sells them in small quantities for a somewhat higher price to the consumer as he needs them, is considered at best an unfortunate necessity if not a parasite on the system.

The mercantile business may be considered as that activity which brings into vital relation the process of production and that of distribution. It produces time and possession utilities, the last step in the productive process. It is that activity or process in which the shares received in distribution, that is, the wages of laborers, the rent received by the landlords, profits made by the enterpriser, and the interest received by the capitalist ~~are~~ are exchanged for the real income or consumable goods.¹

1. The creation of time utilities by the merchant is becoming constantly less important as a result of the improvement of the means of transportation and communication. The merchant, unless he does speculative buying, may order in small quantities but more often,

The lack of appreciation of the production of time and possession utilities together with another erroneous notion that our money, the nominal share received in distribution, is more valuable than the goods for which it can be exchanged, places the mercantile business in an unfortunate position and exposes it to meddling and oppressive legislation.¹ The importance of this business as a necessary step in the production process must be accepted in better faith in the future than it has been accepted in the past if present problems are to be solved.

In the State of Illinois the legislatures have on the whole been conservative in passing laws regulating the mercantile business. Practically no legislation has been passed in the State dealing with unfair methods of competition and the term is not found in the statutes. The legislatures cannot be said to have enacted laws in this field unduly interfering with the freedom of contract or unduly savoring of paternalism. They have not seen fit to substitute the principle of the civil law caveat venditor, let the seller beware, for the common law principle caveat emptor, let the purchaser beware. The courts, on the other hand, have been liberal in construing the laws enacted in this field and have declared only such laws unconstitutional as were clearly contrary to the principles and policies set forth in the organic law of the State.

If our legislatures deserve to be criticised it is rather because of the too frequent revisions of the laws. Too frequent revisions of the laws, especially in new fields of regulation, in-

thus securing a more rapid turnover of his capital. Readings in The Economic History of The United States, by Bogart and Thompson, p. 247.

1. Fraud in the mercantile business has undoubtedly been instrumental in bringing unfavorable criticism upon it, but the more basic reason is found in the lack of appreciation of the production of time and possession utilities.

crease the problems of the courts and produce an uncertainty among the economic interests concerned.

Frequent revisions may be due to one or more of several conditions. Among others the following are probably the more common: Conditions under which the laws apply may be rapidly changing, carelessness in the framing of the laws may make revisions necessary, changes may be due to political reasons purely, or it may have become a fad to enact sufficient laws during a legislative session to fill a handsome volume.

Progress in legislation would rather consist in the enactment of a few laws, carefully framed, and correctly setting forth policies and principles sought to be put into practice. This would necessarily require continuity in legislative policy extending over long periods of time. For this lack of continuity in policy the criticism justly belongs to our system of State government and not to the legislatures whose personnel and party complexion is constantly changing.

Considering these defects in the system of our State government together with the rapidly changing conditions in our economic life, the surprising fact is that law and economic conditions have not been more incongruous.

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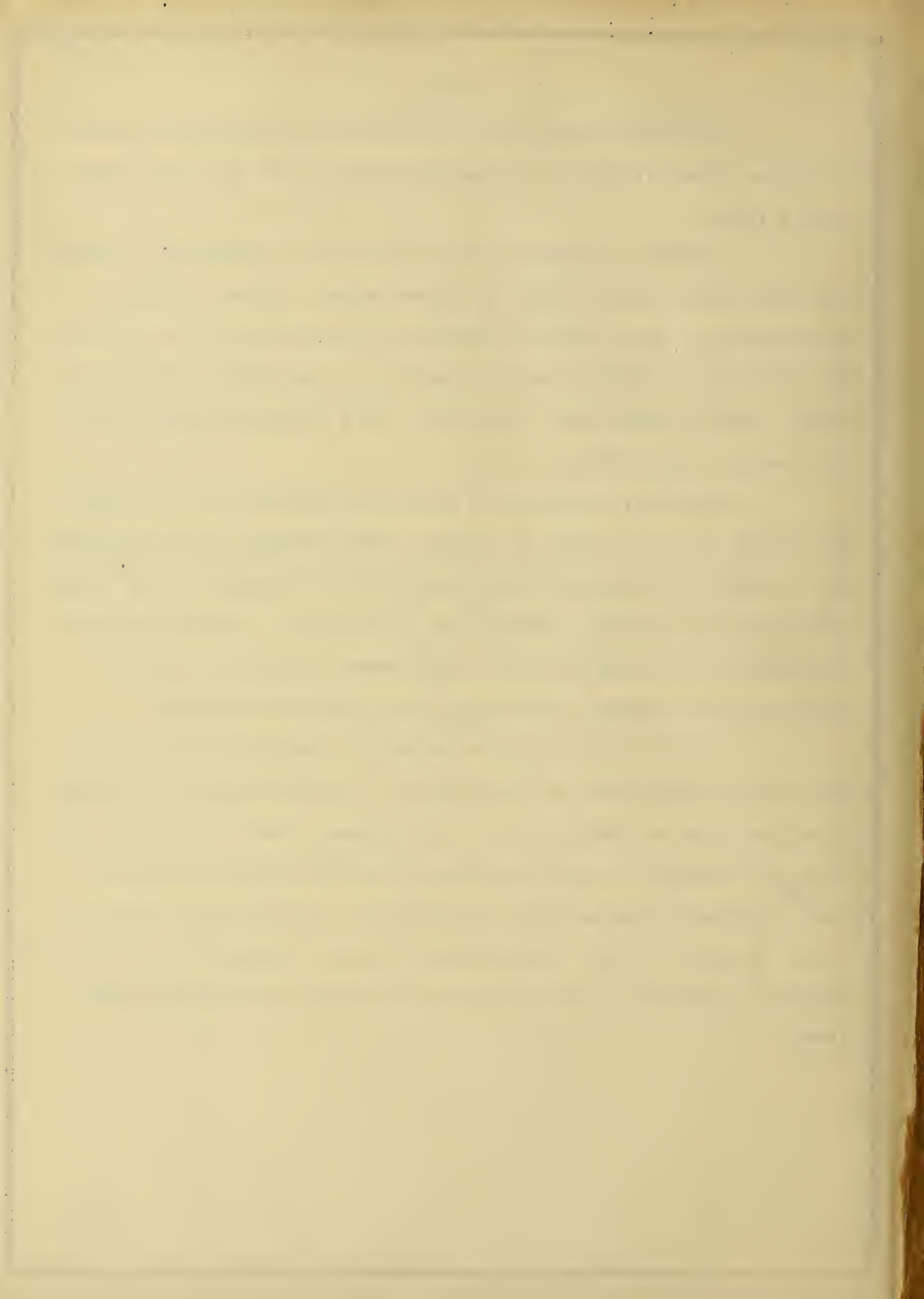
VITA

The writer was born near Freeport in Stephenson county, Illinois, Oct. 25, 1880. The early years of his life were spent on the farm.

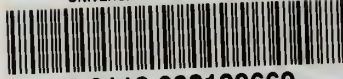
In 1899 he entered the high school at Winnebago, completing the course there offered in three years. He was offered a scholarship at this time by Wheaton College, as was their custom, for having the highest average standing in the class graduated in 1902. The following year, 1902-1903, he attended the high school at Rockford, graduating in June.

He entered Greenville College in the fall of the same year where for four years he pursued the classical course graduating in 1907. During the first year after his graduation he taught in Evansville Seminary, Evansville, Wisconsin. He then returned to Greenville College where for six years, 1908-1914, he had charge of the courses in Economics and Political Science.

In the fall of 1914 he accepted a part-time assistantship in the department of Economics in the University of Illinois which position he has held up to the present time. In connection with his teaching in the University he has throughout the four years pursued graduate work in Economics, receiving the degree of A. M. in June of 1916. He presented for his thesis for the master's degree a "History of State Banks in The State of Illinois since 1860."



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